

section or the alternative blocking technology described in this paragraph.”

47 USC 330.

47 USC 303 note.

(2) CONFORMING AMENDMENT.—Section 330(d), as redesignated by subsection (d)(1)(A), is amended by striking “section 303(s), and section 303(u)” and inserting in lieu thereof “and sections 303(s), 303(u), and 303(x)”.

(e) APPLICABILITY AND EFFECTIVE DATES.—

(1) APPLICABILITY OF RATING PROVISION.—The amendment made by subsection (b) of this section shall take effect 1 year after the date of enactment of this Act, but only if the Commission determines, in consultation with appropriate public interest groups and interested individuals from the private sector, that distributors of video programming have not, by such date—

(A) established voluntary rules for rating video programming that contains sexual, violent, or other indecent material about which parents should be informed before it is displayed to children, and such rules are acceptable to the Commission; and

(B) agreed voluntarily to broadcast signals that contain ratings of such programming.

(2) EFFECTIVE DATE OF MANUFACTURING PROVISION.—In prescribing regulations to implement the amendment made by subsection (c), the Federal Communications Commission shall, after consultation with the television manufacturing industry, specify the effective date for the applicability of the requirement to the apparatus covered by such amendment, which date shall not be less than two years after the date of enactment of this Act.

47 USC 303 note.

SEC. 552. TECHNOLOGY FUND.

It is the policy of the United States to encourage broadcast television, cable, satellite, syndication, other video programming distributors, and relevant related industries (in consultation with appropriate public interest groups and interested individuals from the private sector) to—

(1) establish a technology fund to encourage television and electronics equipment manufacturers to facilitate the development of technology which would empower parents to block programming they deem inappropriate for their children and to encourage the availability thereof to low income parents;

(2) report to the viewing public on the status of the development of affordable, easy to use blocking technology; and

(3) establish and promote effective procedures, standards, systems, advisories, or other mechanisms for ensuring that users have easy and complete access to the information necessary to effectively utilize blocking technology and to encourage the availability thereof to low income parents.

Subtitle C—Judicial Review

47 USC 223 note.

SEC. 561. EXPEDITED REVIEW.

(a) THREE-JUDGE DISTRICT COURT HEARING.—Notwithstanding any other provision of law, any civil action challenging the constitutionality, on its face, of this title or any amendment made by this title, or any provision thereof, shall be heard by a district

court of 3 judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

(b) APPELLATE REVIEW.—Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of 3 judges in an action under subsection (a) holding this title or an amendment made by this title, or any provision thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order.

TITLE VI—EFFECT ON OTHER LAWS

47 USC 152 note.

SEC. 601. APPLICABILITY OF CONSENT DECREES AND OTHER LAW.

(a) APPLICABILITY OF AMENDMENTS TO FUTURE CONDUCT.—

(1) AT&T CONSENT DECREE.—Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the AT&T Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

(2) GTE CONSENT DECREE.—Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the GTE Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

(3) MCCAW CONSENT DECREE.—Any conduct or activity that was, before the date of enactment of this Act, subject to any restriction or obligation imposed by the McCaw Consent Decree shall, on and after such date, be subject to the restrictions and obligations imposed by the Communications Act of 1934 as amended by this Act and subsection (d) of this section and shall not be subject to the restrictions and the obligations imposed by such Consent Decree.

(b) ANTITRUST LAWS.—

(1) SAVINGS CLAUSE.—Except as provided in paragraphs (2) and (3), nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede the applicability of any of the antitrust laws.

(2) REPEAL.—Subsection (a) of section 221 (47 U.S.C. 221(a)) is repealed.

(3) CLAYTON ACT.—Section 7 of the Clayton Act (15 U.S.C. 18) is amended in the last paragraph by striking “Federal Communications Commission,”.

(c) FEDERAL, STATE, AND LOCAL LAW.—

(1) NO IMPLIED EFFECT.—This Act and the amendments made by this Act shall not be construed to modify, impair, or supersede Federal, State, or local law unless expressly so provided in such Act or amendments.

(2) STATE TAX SAVINGS PROVISION.—Notwithstanding paragraph (1), nothing in this Act or the amendments made by this Act shall be construed to modify, impair, or supersede, or authorize the modification, impairment, or supersession of, any State or local law pertaining to taxation, except as provided

in sections 622 and 653(c) of the Communications Act of 1934 and section 602 of this Act.

(d) **COMMERCIAL MOBILE SERVICE JOINT MARKETING.**—Notwithstanding section 22.903 of the Commission's regulations (47 C.F.R. 22.903) or any other Commission regulation, a Bell operating company or any other company may, except as provided in sections 271(e)(1) and 272 of the Communications Act of 1934 as amended by this Act as they relate to wireline service, jointly market and sell commercial mobile services in conjunction with telephone exchange service, exchange access, intraLATA telecommunications service, interLATA telecommunications service, and information services.

(e) **DEFINITIONS.**—As used in this section:

(1) **AT&T CONSENT DECREE.**—The term "AT&T Consent Decree" means the order entered August 24, 1982, in the antitrust action styled *United States v. Western Electric*, Civil Action No. 82-0192, in the United States District Court for the District of Columbia, and includes any judgment or order with respect to such action entered on or after August 24, 1982.

(2) **GTE CONSENT DECREE.**—The term "GTE Consent Decree" means the order entered December 21, 1984, as restated January 11, 1985, in the action styled *United States v. GTE Corp.*, Civil Action No. 83-1298, in the United States District Court for the District of Columbia, and any judgment or order with respect to such action entered on or after December 21, 1984.

(3) **MCCAW CONSENT DECREE.**—The term "McCaw Consent Decree" means the proposed consent decree filed on July 15, 1994, in the antitrust action styled *United States v. AT&T Corp. and McCaw Cellular Communications, Inc.*, Civil Action No. 94-01555, in the United States District Court for the District of Columbia. Such term includes any stipulation that the parties will abide by the terms of such proposed consent decree until it is entered and any order entering such proposed consent decree.

(4) **ANTITRUST LAWS.**—The term "antitrust laws" has the meaning given it in subsection (a) of the first section of the Clayton Act (15 U.S.C. 12(a)), except that such term includes the Act of June 19, 1936 (49 Stat. 1526; 15 U.S.C. 13 et seq.), commonly known as the Robinson-Patman Act, and section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition.

SEC. 602. PREEMPTION OF LOCAL TAXATION WITH RESPECT TO DIRECT-TO-HOME SERVICES.

(a) **PREEMPTION.**—A provider of direct-to-home satellite service shall be exempt from the collection or remittance, or both, of any tax or fee imposed by any local taxing jurisdiction on direct-to-home satellite service.

(b) **DEFINITIONS.**—For the purposes of this section—

(1) **DIRECT-TO-HOME SATELLITE SERVICE.**—The term "direct-to-home satellite service" means only programming transmitted or broadcast by satellite directly to the subscribers' premises without the use of ground receiving or distribution equipment,

except at the subscribers' premises or in the uplink process to the satellite.

(2) **PROVIDER OF DIRECT-TO-HOME SATELLITE SERVICE.**—For purposes of this section, a "provider of direct-to-home satellite service" means a person who transmits, broadcasts, sells, or distributes direct-to-home satellite service.

(3) **LOCAL TAXING JURISDICTION.**—The term "local taxing jurisdiction" means any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or any other local jurisdiction in the territorial jurisdiction of the United States with the authority to impose a tax or fee, but does not include a State.

(4) **STATE.**—The term "State" means any of the several States, the District of Columbia, or any territory or possession of the United States.

(5) **TAX OR FEE.**—The terms "tax" and "fee" mean any local sales tax, local use tax, local intangible tax, local income tax, business license tax, utility tax, privilege tax, gross receipts tax, excise tax, franchise fees, local telecommunications tax, or any other tax, license, or fee that is imposed for the privilege of doing business, regulating, or raising revenue for a local taxing jurisdiction.

(c) **PRESERVATION OF STATE AUTHORITY.**—This section shall not be construed to prevent taxation of a provider of direct-to-home satellite service by a State or to prevent a local taxing jurisdiction from receiving revenue derived from a tax or fee imposed and collected by a State.

TITLE VII—MISCELLANEOUS PROVISIONS

SEC. 701. PREVENTION OF UNFAIR BILLING PRACTICES FOR INFORMATION OR SERVICES PROVIDED OVER TOLL-FREE TELEPHONE CALLS.

(a) **PREVENTION OF UNFAIR BILLING PRACTICES.**—

(1) **IN GENERAL.**—Section 228(c) (47 U.S.C. 228(c)) is amended—

(A) by striking out subparagraph (C) of paragraph (7) and inserting in lieu thereof the following:

"(C) the calling party being charged for information conveyed during the call unless—

"(i) the calling party has a written agreement (including an agreement transmitted through electronic medium) that meets the requirements of paragraph (8); or

"(ii) the calling party is charged for the information in accordance with paragraph (9); or";

(B)(i) by striking "or" at the end of subparagraph (C) of such paragraph;

(ii) by striking the period at the end of subparagraph (D) of such paragraph and inserting a semicolon and "or"; and

(iii) by adding at the end thereof the following:

"(E) the calling party being assessed, by virtue of being asked to connect or otherwise transfer to a pay-per-call service, a charge for the call."; and

(C) by adding at the end the following new paragraphs:
 “(8) SUBSCRIPTION AGREEMENTS FOR BILLING FOR INFORMATION PROVIDED VIA TOLL-FREE CALLS.—

“(A) IN GENERAL.—For purposes of paragraph (7)(C)(i), a written subscription does not meet the requirements of this paragraph unless the agreement specifies the material terms and conditions under which the information is offered and includes—

“(i) the rate at which charges are assessed for the information;

“(ii) the information provider’s name;

“(iii) the information provider’s business address;

“(iv) the information provider’s regular business telephone number;

“(v) the information provider’s agreement to notify the subscriber at least one billing cycle in advance of all future changes in the rates charged for the information; and

“(vi) the subscriber’s choice of payment method, which may be by direct remit, debit, prepaid account, phone bill, or credit or calling card.

“(B) BILLING ARRANGEMENTS.—If a subscriber elects, pursuant to subparagraph (A)(vi), to pay by means of a phone bill—

“(i) the agreement shall clearly explain that the subscriber will be assessed for calls made to the information service from the subscriber’s phone line;

“(ii) the phone bill shall include, in prominent type, the following disclaimer:

‘Common carriers may not disconnect local or long distance telephone service for failure to pay disputed charges for information services.’; and

“(iii) the phone bill shall clearly list the 800 number dialed.

“(C) USE OF PINS TO PREVENT UNAUTHORIZED USE.—A written agreement does not meet the requirements of this paragraph unless it—

“(i) includes a unique personal identification number or other subscriber-specific identifier and requires a subscriber to use this number or identifier to obtain access to the information provided and includes instructions on its use; and

“(ii) assures that any charges for services accessed by use of the subscriber’s personal identification number or subscriber-specific identifier be assessed to subscriber’s source of payment elected pursuant to subparagraph (A)(vi).

“(D) EXCEPTIONS.—Notwithstanding paragraph (7)(C), a written agreement that meets the requirements of this paragraph is not required—

“(i) for calls utilizing telecommunications devices for the deaf;

“(ii) for directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate; or

“(iii) for any purchase of goods or of services that are not information services.

“(E) TERMINATION OF SERVICE.—On receipt by a common carrier of a complaint by any person that an information provider is in violation of the provisions of this section, a carrier shall—

“(i) promptly investigate the complaint; and

“(ii) if the carrier reasonably determines that the complaint is valid, it may terminate the provision of service to an information provider unless the provider supplies evidence of a written agreement that meets the requirements of this section.

“(F) TREATMENT OF REMEDIES.—The remedies provided in this paragraph are in addition to any other remedies that are available under title V of this Act.

“(9) CHARGES BY CREDIT, PREPAID, DEBIT, CHARGE, OR CALLING CARD IN ABSENCE OF AGREEMENT.—For purposes of paragraph (7)(C)(ii), a calling party is not charged in accordance with this paragraph unless the calling party is charged by means of a credit, prepaid, debit, charge, or calling card and the information service provider includes in response to each call an introductory disclosure message that—

“(A) clearly states that there is a charge for the call;

“(B) clearly states the service’s total cost per minute and any other fees for the service or for any service to which the caller may be transferred;

“(C) explains that the charges must be billed on either a credit, prepaid, debit, charge, or calling card;

“(D) asks the caller for the card number;

“(E) clearly states that charges for the call begin at the end of the introductory message; and

“(F) clearly states that the caller can hang up at or before the end of the introductory message without incurring any charge whatsoever.

“(10) BYPASS OF INTRODUCTORY DISCLOSURE MESSAGE.—The requirements of paragraph (9) shall not apply to calls from repeat callers using a bypass mechanism to avoid listening to the introductory message: *Provided*, That information providers shall disable such a bypass mechanism after the institution of any price increase and for a period of time determined to be sufficient by the Federal Trade Commission to give callers adequate and sufficient notice of a price increase.

“(11) DEFINITION OF CALLING CARD.—As used in this subsection, the term ‘calling card’ means an identifying number or code unique to the individual, that is issued to the individual by a common carrier and enables the individual to be charged by means of a phone bill for charges incurred independent of where the call originates.”

(2) REGULATIONS.—The Federal Communications Commission shall revise its regulations to comply with the amendment made by paragraph (1) not later than 180 days after the date of enactment of this Act.

(3) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the date of enactment of this Act.

(b) CLARIFICATION OF “PAY-PER-CALL SERVICES”.—

(1) TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT.—Section 204(1) of the Telephone Disclosure and Dispute Resolution Act (15 U.S.C. 5714(1)) is amended to read as follows:

47 USC 228 n

47 USC 228 n

"(1) The term 'pay-per-call services' has the meaning provided in section 228(i) of the Communications Act of 1934, except that the Commission by rule may, notwithstanding subparagraphs (B) and (C) of section 228(i)(1) of such Act, extend such definition to other similar services providing audio information or audio entertainment if the Commission determines that such services are susceptible to the unfair and deceptive practices that are prohibited by the rules prescribed pursuant to section 201(a)."

(2) COMMUNICATIONS ACT.—Section 228(i)(2) (47 U.S.C. 228(i)(2)) is amended by striking "or any service the charge for which is tariffed."

SEC. 702. PRIVACY OF CUSTOMER INFORMATION.

Title II is amended by inserting after section 221 (47 U.S.C. 221) the following new section:

"SEC. 222. PRIVACY OF CUSTOMER INFORMATION.

"(a) IN GENERAL.—Every telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, other telecommunication carriers, equipment manufacturers, and customers, including telecommunication carriers reselling telecommunications services provided by a telecommunications carrier.

"(b) CONFIDENTIALITY OF CARRIER INFORMATION.—A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

"(c) CONFIDENTIALITY OF CUSTOMER PROPRIETARY NETWORK INFORMATION.—

"(1) PRIVACY REQUIREMENTS FOR TELECOMMUNICATIONS CARRIERS.—Except as required by law or with the approval of the customer, a telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service shall only use, disclose, or permit access to individually identifiable customer proprietary network information in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service, including the publishing of directories.

"(2) DISCLOSURE ON REQUEST BY CUSTOMERS.—A telecommunications carrier shall disclose customer proprietary network information, upon affirmative written request by the customer, to any person designated by the customer.

"(3) AGGREGATE CUSTOMER INFORMATION.—A telecommunications carrier that receives or obtains customer proprietary network information by virtue of its provision of a telecommunications service may use, disclose, or permit access to aggregate customer information other than for the purposes described in paragraph (1). A local exchange carrier may use, disclose, or permit access to aggregate customer information other than for purposes described in paragraph (1) only if it provides such aggregate information to other carriers or persons on reasonable and nondiscriminatory terms and conditions upon reasonable request therefor."

"(d) EXCEPTIONS.—Nothing in this section prohibits a telecommunications carrier from using, disclosing, or permitting access to customer proprietary network information obtained from its customers, either directly or indirectly through its agents—

"(1) to initiate, render, bill, and collect for telecommunications services;

"(2) to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services; or

"(3) to provide any inbound telemarketing, referral, or administrative services to the customer for the duration of the call, if such call was initiated by the customer and the customer approves of the use of such information to provide such service.

"(e) SUBSCRIBER LIST INFORMATION.—Notwithstanding subsections (b), (c), and (d), a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

"(f) DEFINITIONS.—As used in this section:

"(1) CUSTOMER PROPRIETARY NETWORK INFORMATION.—The term 'customer proprietary network information' means—

"(A) information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and

"(B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier; except that such term does not include subscriber list information.

"(2) AGGREGATE INFORMATION.—The term 'aggregate customer information' means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.

"(3) SUBSCRIBER LIST INFORMATION.—The term 'subscriber list information' means any information—

"(A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and

"(B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format."

SEC. 703. POLE ATTACHMENTS.

Section 224 (47 U.S.C. 224) is amended—

(1) in subsection (a)(1), by striking the first sentence and inserting the following: "The term 'utility' means any person who is a local exchange carrier or an electric, gas, water,

steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications.”;

(2) in subsection (a)(4), by inserting after “system” the following: “or provider of telecommunications service”;

(3) by inserting after subsection (a)(4) the following:

“(5) For purposes of this section, the term ‘telecommunications carrier’ (as defined in section 3 of this Act) does not include any incumbent local exchange carrier as defined in section 251(h).”;

(4) by inserting after “conditions” in subsection (c)(1) a comma and the following: “or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f).”;

(5) in subsection (c)(2)(B), by striking “cable television services” and inserting “the services offered via such attachments”;

(6) by inserting after subsection (d)(2) the following:

“(3) This subsection shall apply to the rate for any pole attachment used by a cable television system solely to provide cable service. Until the effective date of the regulations required under subsection (e), this subsection shall also apply to the rate for any pole attachment used by a cable system or any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) to provide any telecommunications service.”; and

(7) by adding at the end thereof the following:

“(e)(1) The Commission shall, no later than 2 years after the date of enactment of the Telecommunications Act of 1996, prescribe regulations in accordance with this subsection to govern the charges for pole attachments used by telecommunications carriers to provide telecommunications services, when the parties fail to resolve a dispute over such charges. Such regulations shall ensure that a utility charges just, reasonable, and nondiscriminatory rates for pole attachments.

“(2) A utility shall apportion the cost of providing space on a pole, duct, conduit, or right-of-way other than the usable space among entities so that such apportionment equals two-thirds of the costs of providing space other than the usable space that would be allocated to such entity under an equal apportionment of such costs among all attaching entities.

“(3) A utility shall apportion the cost of providing usable space among all entities according to the percentage of usable space required for each entity.

“(4) The regulations required under paragraph (1) shall become effective 5 years after the date of enactment of the Telecommunications Act of 1996. Any increase in the rates for pole attachments that result from the adoption of the regulations required by this subsection shall be phased in equal annual increments over a period of 5 years beginning on the effective date of such regulations.

“(f)(1) A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.

“(2) Notwithstanding paragraph (1), a utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.

“(g) A utility that engages in the provision of telecommunications services or cable services shall impute to its costs of providing such services (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an equal amount to the pole attachment rate for which such company would be liable under this section.

“(h) Whenever the owner of a pole, duct, conduit, or right-of-way intends to modify or alter such pole, duct, conduit, or right-of-way, the owner shall provide written notification of such action to any entity that has obtained an attachment to such conduit or right-of-way so that such entity may have a reasonable opportunity to add to or modify its existing attachment. Any entity that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or right-of-way accessible.

“(i) An entity that obtains an attachment to a pole, conduit, or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity (including the owner of such pole, duct, conduit, or right-of-way).”.

SEC. 704. FACILITIES SITING; RADIO FREQUENCY EMISSION STANDARDS.

(a) NATIONAL WIRELESS TELECOMMUNICATIONS SITING POLICY.—Section 332(c) (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

“(7) PRESERVATION OF LOCAL ZONING AUTHORITY.—

“(A) GENERAL AUTHORITY.—Except as provided in this paragraph, nothing in this Act shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.

“(B) LIMITATIONS.—

“(i) The regulation of the placement, construction, and modification of personal wireless service facilities by any State or local government or instrumentality thereof—

“(I) shall not unreasonably discriminate among providers of functionally equivalent services; and

“(II) shall not prohibit or have the effect of prohibiting the provision of personal wireless services.

“(ii) A State or local government or instrumentality thereof shall act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time after the request is duly filed with such government or instrumentality, taking into account the nature and scope of such request.

“(iii) Any decision by a State or local government or instrumentality thereof to deny a request to place, construct, or modify personal wireless service facilities shall be in writing and supported by substantial evidence contained in a written record.

Records.

"(iv) No State or local government or instrumentality thereof may regulate the placement, construction, and modification of personal wireless service facilities on the basis of the environmental effects of radio frequency emissions to the extent that such facilities comply with the Commission's regulations concerning such emissions.

"(v) Any person adversely affected by any final action or failure to act by a State or local government or any instrumentality thereof that is inconsistent with this subparagraph may, within 30 days after such action or failure to act, commence an action in any court of competent jurisdiction. The court shall hear and decide such action on an expedited basis. Any person adversely affected by an act or failure to act by a State or local government or any instrumentality thereof that is inconsistent with clause (iv) may petition the Commission for relief.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) the term 'personal wireless services' means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services;

"(ii) the term 'personal wireless service facilities' means facilities for the provision of personal wireless services; and

"(iii) the term 'unlicensed wireless service' means the offering of telecommunications services using duly authorized devices which do not require individual licenses, but does not mean the provision of direct-to-home satellite services (as defined in section 303(v))."

(b) RADIO FREQUENCY EMISSIONS.—Within 180 days after the enactment of this Act, the Commission shall complete action in ET Docket 93-62 to prescribe and make effective rules regarding the environmental effects of radio frequency emissions.

(c) AVAILABILITY OF PROPERTY.—Within 180 days of the enactment of this Act, the President or his designee shall prescribe procedures by which Federal departments and agencies may make available on a fair, reasonable, and nondiscriminatory basis, property, rights-of-way, and easements under their control for the placement of new telecommunications services that are dependent, in whole or in part, upon the utilization of Federal spectrum rights for the transmission or reception of such services. These procedures may establish a presumption that requests for the use of property, rights-of-way, and easements by duly authorized providers should be granted absent unavoidable direct conflict with the department or agency's mission, or the current or planned use of the property, rights-of-way, and easements in question. Reasonable fees may be charged to providers of such telecommunications services for use of property, rights-of-way, and easements. The Commission shall provide technical support to States to encourage them to make property, rights-of-way, and easements under their jurisdiction available for such purposes.

Courts.

Rules.

President.
17 USC 332 note.

SEC. 705. MOBILE SERVICES DIRECT ACCESS TO LONG DISTANCE CARRIERS.

Section 332(c) (47 U.S.C. 332(c)) is amended by adding at the end the following new paragraph:

"(8) MOBILE SERVICES ACCESS.—A person engaged in the provision of commercial mobile services, insofar as such person is so engaged, shall not be required to provide equal access to common carriers for the provision of telephone toll services. If the Commission determines that subscribers to such services are denied access to the provider of telephone toll services of the subscribers' choice, and that such denial is contrary to the public interest, convenience, and necessity, then the Commission shall prescribe regulations to afford subscribers unblocked access to the provider of telephone toll services of the subscribers' choice through the use of a carrier identification code assigned to such provider or other mechanism. The requirements for unblocking shall not apply to mobile satellite services unless the Commission finds it to be in the public interest to apply such requirements to such services."

Regulations.

SEC. 706. ADVANCED TELECOMMUNICATIONS INCENTIVES.

47 USC 157 n

(a) IN GENERAL.—The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.

(b) INQUIRY.—The Commission shall, within 30 months after the date of enactment of this Act, and regularly thereafter, initiate a notice of inquiry concerning the availability of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) and shall complete the inquiry within 180 days after its initiation. In the inquiry, the Commission shall determine whether advanced telecommunications capability is being deployed to all Americans in a reasonable and timely fashion. If the Commission's determination is negative, it shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.

(c) DEFINITIONS.—For purposes of this subsection:

(1) ADVANCED TELECOMMUNICATIONS CAPABILITY.—The term "advanced telecommunications capability" is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

(2) ELEMENTARY AND SECONDARY SCHOOLS.—The term "elementary and secondary schools" means elementary and secondary schools, as defined in paragraphs (14) and (25), respectively, of section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801).

SEC. 707. TELECOMMUNICATIONS DEVELOPMENT FUND.

(a) **DEPOSIT AND USE OF AUCTION ESCROW ACCOUNTS.**—Section 309(j)(8) (47 U.S.C. 309(j)(8)) is amended by adding at the end the following new subparagraph:

“(C) **DEPOSIT AND USE OF AUCTION ESCROW ACCOUNTS.**—Any deposits the Commission may require for the qualification of any person to bid in a system of competitive bidding pursuant to this subsection shall be deposited in an interest bearing account at a financial institution designated for purposes of this subsection by the Commission (after consultation with the Secretary of the Treasury). Within 45 days following the conclusion of the competitive bidding—

“(i) the deposits of successful bidders shall be paid to the Treasury;

“(ii) the deposits of unsuccessful bidders shall be returned to such bidders; and

“(iii) the interest accrued to the account shall be transferred to the Telecommunications Development Fund established pursuant to section 714 of this Act.”.

(b) **ESTABLISHMENT AND OPERATION OF FUND.**—Title VII is amended by inserting after section 713 (as added by section 305) the following new section:

“SEC. 714. TELECOMMUNICATIONS DEVELOPMENT FUND.

“(a) **PURPOSE OF SECTION.**—It is the purpose of this section—

“(1) to promote access to capital for small businesses in order to enhance competition in the telecommunications industry;

“(2) to stimulate new technology development, and promote employment and training; and

“(3) to support universal service and promote delivery of telecommunications services to underserved rural and urban areas.

“(b) **ESTABLISHMENT OF FUND.**—There is hereby established a body corporate to be known as the Telecommunications Development Fund, which shall have succession until dissolved. The Fund shall maintain its principal office in the District of Columbia and shall be deemed, for purposes of venue and jurisdiction in civil actions, to be a resident and citizen thereof.

“(c) **BOARD OF DIRECTORS.**—

“(1) **COMPOSITION OF BOARD; CHAIRMAN.**—The Fund shall have a Board of Directors which shall consist of 7 persons appointed by the Chairman of the Commission. Four of such directors shall be representative of the private sector and three of such directors shall be representative of the Commission, the Small Business Administration, and the Department of the Treasury, respectively. The Chairman of the Commission shall appoint one of the representatives of the private sector to serve as chairman of the Fund within 30 days after the date of enactment of this section, in order to facilitate rapid creation and implementation of the Fund. The directors shall include members with experience in a number of the following areas: finance, investment banking, government banking, communications law and administrative practice, and public policy.

“(2) **TERMS OF APPOINTED AND ELECTED MEMBERS.**—The directors shall be eligible to serve for terms of 5 years, except of the initial members, as designated at the time of their appointment—

“(A) 1 shall be eligible to service for a term of 1 year;

“(B) 1 shall be eligible to service for a term of 2 years;

“(C) 1 shall be eligible to service for a term of 3 years;

“(D) 2 shall be eligible to service for a term of 4 years; and

“(E) 2 shall be eligible to service for a term of 5 years (1 of whom shall be the Chairman).

Directors may continue to serve until their successors have been appointed and have qualified.

“(3) **MEETINGS AND FUNCTIONS OF THE BOARD.**—The Board of Directors shall meet at the call of its Chairman, but at least quarterly. The Board shall determine the general policies which shall govern the operations of the Fund. The Chairman of the Board shall, with the approval of the Board, select, appoint, and compensate qualified persons to fill the offices as may be provided for in the bylaws, with such functions, powers, and duties as may be prescribed by the bylaws or by the Board of Directors, and such persons shall be the officers of the Fund and shall discharge all such functions, powers, and duties.

“(d) **ACCOUNTS OF THE FUND.**—The Fund shall maintain its accounts at a financial institution designated for purposes of this section by the Chairman of the Board (after consultation with the Commission and the Secretary of the Treasury). The accounts of the Fund shall consist of—

“(1) interest transferred pursuant to section 309(j)(8)(C) of this Act;

“(2) such sums as may be appropriated to the Commission for advances to the Fund;

“(3) any contributions or donations to the Fund that are accepted by the Fund; and

“(4) any repayment of, or other payment made with respect to, loans, equity, or other extensions of credit made from the Fund.

“(e) **USE OF THE FUND.**—All moneys deposited into the accounts of the Fund shall be used solely for—

“(1) the making of loans, investments, or other extensions of credits to eligible small businesses in accordance with subsection (f);

“(2) the provision of financial advice to eligible small businesses;

“(3) expenses for the administration and management of the Fund (including salaries, expenses, and the rental or purchase of office space for the fund);

“(4) preparation of research, studies, or financial analyses; and

“(5) other services consistent with the purposes of this section.

“(f) **LENDING AND CREDIT OPERATIONS.**—Loans or other extensions of credit from the Fund shall be made available in accordance

with the requirements of the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.) and any other applicable law to an eligible small business on the basis of—

“(1) the analysis of the business plan of the eligible small business;

“(2) the reasonable availability of collateral to secure the loan or credit extension;

“(3) the extent to which the loan or credit extension promotes the purposes of this section; and

“(4) other lending policies as defined by the Board.

“(g) RETURN OF ADVANCES.—Any advances appropriated pursuant to subsection (d)(2) shall be disbursed upon such terms and conditions (including conditions relating to the time or times of repayment) as are specified in any appropriations Act providing such advances.

“(h) GENERAL CORPORATE POWERS.—The Fund shall have power—

“(1) to sue and be sued, complain and defend, in its corporate name and through its own counsel;

“(2) to adopt, alter, and use the corporate seal, which shall be judicially noticed;

“(3) to adopt, amend, and repeal by its Board of Directors, bylaws, rules, and regulations as may be necessary for the conduct of its business;

“(4) to conduct its business, carry on its operations, and have officers and exercise the power granted by this section in any State without regard to any qualification or similar statute in any State;

“(5) to lease, purchase, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with any property, real, personal, or mixed, or any interest therein, wherever situated, for the purposes of the Fund;

“(6) to accept gifts or donations of services, or of property, real, personal, or mixed, tangible or intangible, in aid of any of the purposes of the Fund;

“(7) to sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of its property and assets;

“(8) to appoint such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties, to fix their salaries, require bonds for them, and fix the penalty thereof; and

“(9) to enter into contracts, to execute instruments, to incur liabilities, to make loans and equity investment, and to do all things as are necessary or incidental to the proper management of its affairs and the proper conduct of its business.

“(i) ACCOUNTING, AUDITING, AND REPORTING.—The accounts of the Fund shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants. A report of each such audit shall be furnished to the Secretary of the Treasury and the Commission. The representatives of the Secretary and the Commission shall have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Fund and necessary to facilitate the audit.

“(j) REPORT ON AUDITS BY TREASURY.—A report of each such audit for a fiscal year shall be made by the Secretary of the

Treasury to the President and to the Congress not later than 6 months following the close of such fiscal year. The report shall set forth the scope of the audit and shall include a statement of assets and liabilities, capital and surplus or deficit; a statement of surplus or deficit analysis; a statement of income and expense; a statement of sources and application of funds; and such comments and information as may be deemed necessary to keep the President and the Congress informed of the operations and financial condition of the Fund, together with such recommendations with respect thereto as the Secretary may deem advisable.

“(k) DEFINITIONS.—As used in this section:

“(1) ELIGIBLE SMALL BUSINESS.—The term ‘eligible small business’ means business enterprises engaged in the telecommunications industry that have \$50,000,000 or less in annual revenues, on average over the past 3 years prior to submitting the application under this section.

“(2) FUND.—The term ‘Fund’ means the Telecommunications Development Fund established pursuant to this section.

“(3) TELECOMMUNICATIONS INDUSTRY.—The term ‘telecommunications industry’ means communications businesses using regulated or unregulated facilities or services and includes broadcasting, telecommunications, cable, computer, data transmission, software, programming, advanced messaging, and electronics businesses.”

SEC. 708. NATIONAL EDUCATION TECHNOLOGY FUNDING CORPORATION.

(a) FINDINGS; PURPOSE.—

(1) FINDINGS.—The Congress finds as follows:

(A) CORPORATION.—There has been established in the District of Columbia a private, nonprofit corporation known as the National Education Technology Funding Corporation which is not an agency or independent establishment of the Federal Government.

(B) BOARD OF DIRECTORS.—The Corporation is governed by a Board of Directors, as prescribed in the Corporation’s articles of incorporation, consisting of 15 members, of which—

(i) five members are representative of public agencies representative of schools and public libraries;

(ii) five members are representative of State government, including persons knowledgeable about State finance, technology and education; and

(iii) five members are representative of the private sector, with expertise in network technology, finance and management.

(C) CORPORATE PURPOSES.—The purposes of the Corporation, as set forth in its articles of incorporation, are—

(i) to leverage resources and stimulate private investment in education technology infrastructure;

(ii) to designate State education technology agencies to receive loans, grants or other forms of assistance from the Corporation;

(iii) to establish criteria for encouraging States to—

(I) create, maintain, utilize and upgrade interactive high capacity networks capable of providing

audio, visual and data communications for elementary schools, secondary schools and public libraries;

(II) distribute resources to assure equitable aid to all elementary schools and secondary schools in the State and achieve universal access to network technology; and

(III) upgrade the delivery and development of learning through innovative technology-based instructional tools and applications;

(iv) to provide loans, grants and other forms of assistance to State education technology agencies, with due regard for providing a fair balance among types of school districts and public libraries assisted and the disparate needs of such districts and libraries;

(v) to leverage resources to provide maximum aid to elementary schools, secondary schools and public libraries; and

(vi) to encourage the development of education telecommunications and information technologies through public-private ventures, by serving as a clearinghouse for information on new education technologies, and by providing technical assistance, including assistance to States, if needed, to establish State education technology agencies.

(2) **PURPOSE.**—The purpose of this section is to recognize the Corporation as a nonprofit corporation operating under the laws of the District of Columbia, and to provide authority for Federal departments and agencies to provide assistance to the Corporation.

(b) **DEFINITIONS.**—For the purpose of this section—

(1) the term “Corporation” means the National Education Technology Funding Corporation described in subsection (a)(1)(A);

(2) the terms “elementary school” and “secondary school” have the same meanings given such terms in section 14101 of the Elementary and Secondary Education Act of 1965; and

(3) the term “public library” has the same meaning given such term in section 3 of the Library Services and Construction Act.

(c) **ASSISTANCE FOR EDUCATION TECHNOLOGY PURPOSES.**—

(1) **RECEIPT BY CORPORATION.**—Notwithstanding any other provision of law, in order to carry out the corporate purposes described in subsection (a)(1)(C), the Corporation shall be eligible to receive discretionary grants, contracts, gifts, contributions, or technical assistance from any Federal department or agency, to the extent otherwise permitted by law.

(2) **AGREEMENT.**—In order to receive any assistance described in paragraph (1) the Corporation shall enter into an agreement with the Federal department or agency providing such assistance, under which the Corporation agrees—

(A) to use such assistance to provide funding and technical assistance only for activities which the Board of Directors of the Corporation determines are consistent with the corporate purposes described in subsection (a)(1)(C);

(B) to review the activities of State education technology agencies and other entities receiving assistance from

the Corporation to assure that the corporate purposes described in subsection (a)(1)(C) are carried out;

(C) that no part of the assets of the Corporation shall accrue to the benefit of any member of the Board of Directors of the Corporation, any officer or employee of the Corporation, or any other individual, except as salary or reasonable compensation for services;

(D) that the Board of Directors of the Corporation will adopt policies and procedures to prevent conflicts of interest;

(E) to maintain a Board of Directors of the Corporation consistent with subsection (a)(1)(B);

(F) that the Corporation, and any entity receiving the assistance from the Corporation, are subject to the appropriate oversight procedures of the Congress; and

(G) to comply with—

(i) the audit requirements described in subsection (d); and

(ii) the reporting and testimony requirements described in subsection (e).

(3) **CONSTRUCTION.**—Nothing in this section shall be construed to establish the Corporation as an agency or independent establishment of the Federal Government, or to establish the members of the Board of Directors of the Corporation, or the officers and employees of the Corporation, as officers or employees of the Federal Government.

(d) **AUDITS.**—

(1) **AUDITS BY INDEPENDENT CERTIFIED PUBLIC ACCOUNTANTS.**—

(A) **IN GENERAL.**—The Corporation's financial statements shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of a State or other political subdivision of the United States. The audits shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation and necessary to facilitate the audit shall be made available to the person or persons conducting the audits, and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

(B) **REPORTING REQUIREMENTS.**—The report of each annual audit described in subparagraph (A) shall be included in the annual report required by subsection (e)(1).

(2) **RECORDKEEPING REQUIREMENTS; AUDIT AND EXAMINATION OF BOOKS.**—

(A) **RECORDKEEPING REQUIREMENTS.**—The Corporation shall ensure that each recipient of assistance from the Corporation keeps—

(i) separate accounts with respect to such assistance;

(ii) such records as may be reasonably necessary to fully disclose—

(I) the amount and the disposition by such recipient of the proceeds of such assistance;

(II) the total cost of the project or undertaking in connection with which such assistance is given or used; and

(III) the amount and nature of that portion of the cost of the project or undertaking supplied by other sources; and

(iii) such other records as will facilitate an effective audit.

(B) **AUDIT AND EXAMINATION OF BOOKS.**—The Corporation shall ensure that the Corporation, or any of the Corporation's duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of any recipient of assistance from the Corporation that are pertinent to such assistance. Representatives of the Comptroller General shall also have such access for such purpose.

(e) **ANNUAL REPORT; TESTIMONY TO THE CONGRESS.**—

(1) **ANNUAL REPORT.**—Not later than April 30 of each year, the Corporation shall publish an annual report for the preceding fiscal year and submit that report to the President and the Congress. The report shall include a comprehensive and detailed evaluation of the Corporation's operations, activities, financial condition, and accomplishments under this section and may include such recommendations as the Corporation deems appropriate.

(2) **TESTIMONY BEFORE CONGRESS.**—The members of the Board of Directors, and officers, of the Corporation shall be available to testify before appropriate committees of the Congress with respect to the report described in paragraph (1), the report of any audit made by the Comptroller General pursuant to this section, or any other matter which any such committee may determine appropriate.

SEC. 709. REPORT ON THE USE OF ADVANCED TELECOMMUNICATIONS SERVICES FOR MEDICAL PURPOSES.

The Secretary of Commerce, in consultation with the Secretary of Health and Human Services and other appropriate departments and agencies, shall submit a report to the Committee on Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate concerning the activities of the Joint Working Group on Telemedicine, together with any findings reached in the studies and demonstrations on telemedicine funded by the Public Health Service or other Federal agencies. The report shall examine questions related to patient safety, the efficacy and quality of the services provided, and other legal, medical, and economic issues related to the utilization of advanced telecommunications services for medical purposes. The report shall be submitted to the respective committees by January 31, 1997.

SEC. 710. AUTHORIZATION OF APPROPRIATIONS.

(a) **IN GENERAL.**—In addition to any other sums authorized by law, there are authorized to be appropriated to the Federal Communications Commission such sums as may be necessary to carry out this Act and the amendments made by this Act.

(b) **EFFECT ON FEES.**—For the purposes of section 9(b)(2) (47 U.S.C. 159(b)(2)), additional amounts appropriated pursuant to subsection (a) shall be construed to be changes in the amounts appro-

Publication.

47 USC 156 note.

47 USC 156 note.

Prated for the performance of activities described in section 9(a) of the Communications Act of 1934.

(c) **FUNDING AVAILABILITY.**—Section 309(j)(8)(B) (47 U.S.C. 309(j)(8)(B)) is amended by adding at the end the following new sentence: "Such offsetting collections are authorized to remain available until expended."

Approved February 8, 1996.

LEGISLATIVE HISTORY—S. 652 (H.R. 1555):

HOUSE REPORTS: No. 104-204, Pt. 1 accompanying H.R. 1555 (Comm. on Commerce).

SENATE REPORTS: Nos. 104-23 (Comm. on Commerce, Science, and Transportation) and 104-230 (Comm. of Conference).

CONGRESSIONAL RECORD:

Vol. 141 (1995): June 7, 8, 12-15, considered and passed Senate.

Aug. 2, 4, H.R. 1555 considered and passed House.

Oct. 12, S. 652 considered and passed House, amended, in lieu of H.R. 1555.

Vol. 142 (1996): Feb. 1, House and Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 32 (1996): Feb. 8, Presidential remarks and statement.

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repealed.

this act shall take effect

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be exercised at the discretion of the agency. Such notice shall include a subject-matter index of the rules and information on how the rules may be obtained.

(c) The agency's review and designation must be completed by December 1, 1995; each agency under the direction of the Governor shall make a report to the Governor, and each agency under the joint direction of the Governor and Cabinet shall report to the Governor and Cabinet, by January 1, 1996, on which of its rules have been designated as rules the violation of which would be a minor violation.

(d) The Governor or the Governor and Cabinet, as appropriate pursuant to paragraph (c), may evaluate the review and designation effects of each agency and may apply a different designation than that applied by the agency.

(e) This section does not apply to the regulation of law enforcement personnel or teachers.

(f) Designation pursuant to this section is not subject to challenge under chapter 120, Florida Statutes.

Section 2. This act shall take effect upon becoming a law.

Became a law without the Governor's approval June 18, 1995.

Filed in Office Secretary of State June 16, 1995.

CHAPTER 95-403

Committee Substitute for Senate Bill No. 1554

An act relating to local exchange telecommunications companies; amending s. 166.231, F.S.; providing for application of the municipal public service tax to certain sales of taxable telecommunications services; providing criteria; providing for the payment by telecommunications companies of any shortfall in certain municipal utility tax collections; amending s. 203.01, F.S.; providing for application of the gross receipts tax for utility services to certain sales of taxable telecommunications services; providing criteria; providing for the payment by telecommunications companies of any shortfall in certain gross receipt tax collections; amending s. 212.05, F.S.; providing for application of the sales and use tax to certain sales of taxable telecommunications services; providing criteria; amending s. 364.01, F.S.; providing legislative findings relating to powers of the Public Service Commission; providing additional commission jurisdiction; amending s. 364.02, F.S.; providing additional definitions; revising definitions; creating s. 364.025, F.S.; providing for universal telecommunications service; providing requirements; providing procedures for alternative local exchange telecommunications companies; amending s. 364.035, F.S.; deleting a provision for minimum filing requirements for local exchange telecommunications companies; creating s. 364.051, F.S.; providing for price regulation of basic local telecommunications service; providing requirements; providing procedures; providing for price regulation of non-basic services; providing requirements; creating s. 364.052, F.S.; providing for regulatory methods for small local exchange telecommunica-

tions companies; providing requirements; providing procedures; amending s. 364.057, F.S.; authorizing the commission to approve experimental services; amending s. 364.058, F.S.; authorizing the commission to conduct expedited meetings; amending s. 364.10, F.S.; authorizing telecommunications companies to provide a Lifeline Assistance Plan to certain subscribers; amending s. 364.16, F.S.; requiring interconnection of telecommunication services and facilities of local exchange telecommunications companies; prohibiting certain activities; providing requirements for portability of telephone numbers; creating s. 364.161, F.S.; requiring unbundling and offering for resale network features, functions, and capabilities of local exchange telecommunications companies; creating s. 364.162, F.S.; providing for negotiated prices for interconnection and for resale of certain services and facilities; requiring the commission to set rates; providing criteria; providing procedures; creating s. 364.163, F.S.; providing for setting of rates for network access services; providing for rate increases; providing procedures; providing for rate reduction; specifying criteria; providing for refund of certain revenues; providing the commission with continuous oversight; amending s. 364.183, F.S.; requiring commission access to certain records; amending s. 364.24, F.S.; providing a penalty for disclosing certain customer account information; creating s. 364.245, F.S.; providing for discontinuation of telecommunications service used for unlawful purposes; providing for reinstatement of such service; amending s. 364.335, F.S.; deleting certain requirements relating to application for a certificate; amending s. 364.336, F.S.; authorizing the commission to establish criteria for payment of regulatory assessment fees; amending s. 364.337, F.S.; providing for certification of alternative local exchange telecommunications companies and intrastate interexchange telecommunications services; providing for application; providing procedures; providing the commission with continuing regulatory oversight over provision of basic local exchange telecommunications service provided by certain companies for certain purposes; amending s. 364.3375, F.S.; providing for eligibility of pay telephone service stations to subscribe to certain services; creating s. 364.502, F.S.; providing for video programming; requiring designation of reserve capacity for public use; providing criteria; prohibiting resale or transfer of such capacity; amending s. 364.3381, F.S.; revising provisions relating to cross-subsidization; providing the cost standard for determining cross-subsidization; amending s. 364.339, F.S.; requiring a certificate to provide shared tenant service; amending s. 364.385, F.S.; revising saving clauses; requiring sharing of earnings with customers under certain circumstances; amending s. 364.386, F.S.; requiring the commission to submit annual reports to the Legislature; specifying contents of the reports; requiring the Public Counsel to submit a report; creating s. 364.503, F.S.; providing for notice of mergers and acquisitions between local exchange telecommunications companies and cable companies; creating part II of chapter 364, F.S.; creating the "Educational Facilities Infrastructure Improvement Act"; providing legislative intent; providing definitions; establishing The Florida Distance Learning Network; providing for board of directors' membership; providing for organization; providing for meetings; establishing duties of the board of directors; establishing the powers of the board of directors; providing for the appointment of an executive director; providing

powers and duties; providing for an annual report and audits; establishing the Educational Technology Grant Program; providing awards; requiring an annual report; requiring the network to develop a needs assessment report; requiring the network to submit a plan to the Legislature; specifying contents of the plan; requiring a progress report; requiring the Department of Management Services to administer the provision of advanced telecommunications and broadband services to certain public education facilities; providing criteria; providing for a discount for such services under certain circumstances; providing for funding; providing for infrastructure investment; requiring telecommunications companies and cable television companies to provide certain services; providing criteria; providing for preferential rates for use of broadband services; requiring the commission to adopt rules; prohibiting sale, resale, or transfer of services which receive preferential rates; providing for the imposition of fines under certain circumstances; providing for deposit and disposition of such fines; repealing s. 364.036, F.S., relating to alternative regulatory methods for local exchange telecommunications companies; repealing s. 364.338, F.S., relating to competitive services provided by local exchange telecommunications companies; requiring the commission to implement a consumer information program for certain purposes; providing powers of the commission; requiring local governments to treat companies without discrimination; providing duties of the Department of Labor and Employment Security; creating s. 817.4821, F.S.; providing definitions; prohibiting, and providing a penalty for, knowing, unlawful possession of a "cloned cellular telephone," as defined; prohibiting, and providing a penalty for, knowing, unlawful possession of an instrument capable of intercepting "electronic serial number" and "mobile identification number" combinations, as defined; prohibiting, and providing a penalty for, knowing, unlawful sale of a cloned cellular telephone; providing an exemption for the possession or use of cloning paraphernalia, a cloned cellular telephone or any intercept in a law enforcement investigation; providing severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (f) is added to subsection (9) of section 166.231, Florida Statutes, 1994 Supplement, to read:

166.231 Municipalities; public service tax.—

(9) A municipality may levy a tax on the purchase of telecommunication services as defined in s. 203.012 as follows:

(f)1. If the sale of a taxable telecommunication service also involves the sale of an exempt cable television service, the tax shall be applied to the value of the taxable service when it is sold separately.

2. If the company does not offer this service separately, the consideration paid shall be separately identified and stated with respect to the taxable and exempt portions of the transaction as a condition of the exemption.

3. The amounts identified as taxable in subparagraph 2. shall not be less than the statewide average tariff rates set forth by the local exchange telecommunications companies in the tariffs filed with the Public Service Commission on January

1, 1995, and on January 1 of each year thereafter for the equivalent services subject to this section. The Public Service Commission shall publish the statewide average tariff rates annually, beginning on January 1, 1996.

4. If the total amount of municipal utility tax collected by a municipality or charter county from telecommunication services pursuant to s. 166.231(9) for the period of July 1, 1995 to June 30, 1996 is less than the amount collected for the period July 1, 1994 to June 30, 1995, the municipality or charter county shall assess each company that remits such tax a prorata share of the shortfall. The shortfall shall be prorated based on the amount of tax remitted by each company for the period July 1, 1995 to June 30, 1996 and the total amount of tax remitted for the same period. By September 1, 1996, the municipality or charter county shall certify to each company the amount of additional tax owed and the tax shall be remitted to the municipality or charter county by October 1, 1996. Provided, however, that this assessment may only be imposed if, in addition to the conditions above, a municipality or charter county has levied the applicable maximum tax rate allowed under this paragraph during the period July 1, 1995, and June 30, 1996 and has not switched between the two options allowed under subparagraphs 1. or 2. during the period July 1, 1995, and June 30, 1996.

Purchases of local telephone service or other telecommunications service for use in the conduct of a telecommunications service for hire or otherwise for resale are exempt from the tax imposed by this subsection.

Section 2. Subsection (9) is added to section 203.01, Florida Statutes, to read:

203.01 Tax on gross receipts for utility services.—

(9)(a) If the sale of a taxable telecommunication service also involves the sale of commercial or cable television service exempt under the provision of s. 203.012(2)(b)2., the tax shall be applied to the value of the taxable service when it is sold separately.

(b) If the company does not offer this service separately, the consideration paid shall be separately identified and stated with respect to the taxable and exempt portions of the transaction as a condition of the exemption.

(c) The amounts identified as taxable in paragraph (b) shall not be less than the statewide average tariff rates set forth by the local exchange telecommunications companies in the tariffs filed with the Public Service Commission on January 1, 1995, and on January 1 of each of year thereafter for the equivalent services subject to the provisions of this section. The Public Service Commission shall publish the statewide average tariff rates annually, beginning on January 1, 1996.

Section 3. If the total amount of gross receipts tax collected by the state from telecommunications services pursuant to section 203.01(1)(a), Florida Statutes, for the period July 1, 1995 to June 30, 1996 is less than the amount collected for the period July 1, 1994 to June 30, 1995, the department shall assess each person subject to such tax a prorata share of the shortfall. The shortfall shall be prorated based on the amount of tax paid by each company for the period July 1, 1995 to June 30, 1996 and the total amount of tax collected for the same period. By September 1, 1996, the department shall certify to each person the amount of additional tax owed and the tax shall be remitted to the state by October 1, 1996.

Section 4. Paragraph (e) of subsection (1) of section 212.05, Florida Statutes, 1994 Supplement, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(e)1. At the rate of 6 percent on charges for:

a. All telegraph messages and long-distance telephone calls beginning and terminating in this state, telecommunication service as defined in s. 203.012, and those services described in s. 203.012(2)(a), except that the tax rate for charges for telecommunication service is 7 percent.

b. Any television system program service.

c. The installation of telecommunication and telegraphic equipment.

d. Electrical power or energy, except that the tax rate for charges for electrical power or energy is 7 percent.

2. For purposes of this part, "television system program service" means the transmitting, by any means, of any audio or video signal to a subscriber for other than retransmission, or the installing, connecting, reconnecting, disconnecting, moving, or changing of any equipment related to such service. For purposes of this part, the term "telecommunication service" does not include local service provided through a pay telephone. The provisions of s. 212.17(3), regarding credit for tax paid on charges subsequently found to be worthless, shall be equally applicable to any tax paid under the provisions of this section on charges for telecommunication or telegraph services or electric power subsequently found to be uncollectible. The word "charges" in this paragraph does not include any excise or similar tax levied by the Federal Government, any political subdivision of the state, or any municipality upon the purchase or sale of telecommunication, television system program, or telegraph service or electric power, which tax is collected by the seller from the purchaser.

3. Telegraph messages and telecommunication services which originate or terminate in this state, other than interstate private communication services, and are billed to a customer, telephone number, or device located within this state are taxable under this paragraph. Interstate private communication services are taxable under this paragraph as follows:

a. One hundred percent of the charge imposed at each channel termination point within this state;

b. One hundred percent of the charge imposed for the total channel mileage between each channel termination point within this state; and

c. The portion of the interstate interoffice channel mileage charge as determined by multiplying said charge times a fraction, the numerator of which is the

air miles between the last channel termination point in this state and the vertical and horizontal coordinates, 7856 and 1756, respectively, and the denominator of which is the air miles between the last channel termination point in this state and the first channel termination point outside this state. The denominator of this fraction shall be adjusted, if necessary, by adding the numerator of said fraction to similarly determined air miles in the state in which the other channel termination point is located, so that the summation of the apportionment factor for this state and the apportionment factor for the other state is not greater than one, to ensure that no more than 100 percent of the interstate interoffice channel mileage charge can be taxed by this state and another state.

4. The tax imposed pursuant to this paragraph shall not exceed \$50,000 per calendar year on charges to any person for interstate telecommunications services defined in s. 203.012(4) and (7)(b), if the majority of such services used by such person are for communications originating outside of this state and terminating in this state. This exemption shall only be granted to holders of a direct pay permit issued pursuant to this subparagraph. No refunds shall be given for taxes paid prior to receiving a direct pay permit. Upon application, the department may issue a direct pay permit to the purchaser of telecommunications services authorizing such purchaser to pay tax on such services directly to the department. Any vendor furnishing telecommunications services to the holder of a valid direct pay permit shall be relieved of the obligation to collect and remit the tax on such service. Tax payments and returns pursuant to a direct pay permit shall be monthly. For purposes of this subparagraph, the term "person" shall be limited to a single legal entity and shall not be construed as meaning a group or combination of affiliated entities or entities controlled by one person or group of persons. For purposes of this subparagraph, for calendar year 1986, the term "calendar year" means the last 6 months of 1986.

5. If the sale of a television system program service, as defined in this paragraph, also involves the sale of an item exempt under s. 212.08(7)(i), the tax shall be applied to the value of the taxable service when it is sold separately. If the company does not offer this service separately, the consideration paid shall be separately identified and stated with respect to the taxable and exempt portions of the transaction as a condition of the exemption, except that the amount identified as taxable shall not be less than the cost of the service.

Section 5. Section 364.01, Florida Statutes, is amended to read:

364.01 Powers of commission, legislative intent.—

(1) The Florida Public Service Commission shall exercise over and in relation to telecommunications companies the powers conferred by this chapter.

(2) It is the legislative intent to give exclusive jurisdiction in all matters set forth in this chapter to the Florida Public Service Commission in regulating telecommunications ~~companies~~ common carriers, and such preemption shall supersede any local or special act or municipal charter where any conflict of authority may exist. However, the provisions of this chapter shall not affect the authority and powers granted in s. 166.231(9) or s. 337.401.

(3) The Legislature finds that the competitive provision of telecommunications services, including local exchange telecommunications service, is in the public interest and will provide customers with freedom of choice, encourage the intro-

duction of new telecommunications service, encourage technological innovation, and encourage investment in telecommunications infrastructure. The Legislature further finds that the transition from the monopoly provision of local exchange service to the competitive provision thereof will require appropriate regulatory oversight to protect consumers and provide for the development of fair and effective competition, but nothing in this chapter shall limit the availability to any party of any remedy under state or federal antitrust laws. The Legislature further finds that changes in regulations allowing increased competition in telecommunications services could provide the occasion for increases in the telecommunications workforce; therefore, it is in the public interest that competition in telecommunications services lead to a situation that enhances the high-technological skills and the economic status of the telecommunications workforce.

(4)(3) The commission shall exercise its exclusive jurisdiction in order to:

(a) Protect the public health, safety, and welfare by ensuring that basic local telecommunications services are available to all ~~consumers in residents~~ of the state at reasonable and affordable prices.

(b) Encourage competition through flexible regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services.

(c)(b) Protect the public health, safety, and welfare by ensuring that monopoly services provided by a ~~local exchange telecommunications companies~~ company continue to be subject to effective price, rate, and service regulation.

(d)(c) Promote competition by encouraging new entrants into telecommunications markets and by allowing a transitional period in which new entrants are subject to a lesser level of regulatory oversight than local exchange telecommunications companies. Encourage cost-effective technological innovation and competition in the telecommunications industry if doing so will benefit the public by making modern and adequate telecommunications services available at reasonable prices.

(e) Encourage all providers of telecommunications services to introduce new or experimental telecommunications services free of unnecessary regulatory restraints.

(f) Eliminate any rules and/or regulations which will delay or impair the transition to competition.

(g)(d) Ensure that all providers of telecommunications services are treated fairly, by preventing anticompetitive behavior and eliminating unnecessary regulatory restraint.

(h)(e) Recognize the continuing emergence of a competitive telecommunications environment through the flexible regulatory treatment of competitive telecommunications services, where appropriate, if doing so does not reduce the availability of adequate basic local telecommunications exchange service to all citizens of the state at reasonable and affordable prices, if competitive telecommunications services are not subsidized by monopoly telecommunications services, and if all monopoly services are available to all competitors on a nondiscriminatory basis.

(i)(f) Continue its historical role as a surrogate for competition for monopoly services provided by local exchange telecommunications companies.

Section 6. Section 364.02, Florida Statutes, is amended to read:

364.02 Definitions.—As used in this chapter:

(1) "Alternative local exchange telecommunications company" means any company certificated by the commission to provide local exchange telecommunications services in this state on or after July 1, 1995.

(2) "Basic local telecommunications service" means voice-grade, flat-rate residential and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multi-frequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company, such term shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.

(3) "Commercial mobile radio service provider" means a commercial mobile radio service provider as defined by and pursuant to 47 U.S.C. 153(n) and 332(d).

(4)(+) "Commission" means the Florida Public Service Commission.

(5)(2) "Corporation" includes a corporation, company, association, or joint stock association.

(6) "Local exchange telecommunications company" means any company certificated by the commission to provide local exchange telecommunications service in this state on or before June 30, 1995.

(7)(3) "Monopoly service" means a telecommunications service for which there is no effective competition, either in fact or by operation of law.

(8) "Non-basic service" means any telecommunications service provided by a local exchange telecommunications company other than a basic local telecommunications service, a local interconnection arrangement described in s. 364.16, or a network access service described in s. 364.163.

(9)(4) "Operator service" includes, but is not limited to, billing or completion of third-party, person-to-person, collect, or calling card or credit card calls through the use of a live operator or automated equipment.

(10)(5) "Operator service provider" means a person who furnishes operator service through a call aggregator.

(11)(6) "Service" is to be construed in its broadest and most inclusive sense.

(12)(7) "Telecommunications company" includes every corporation, partnership, and person and their lessees, trustees, or receivers appointed by any court whatsoever, and every political subdivision in of the state, offering two-way telecommunications service to the public for hire within this state by the use of a telecommunications facility. The term "telecommunications company" does not include an entity which provides a telecommunications facility exclusively to a certificated telecommunications company, a commercial mobile radio service provider, a facsimile transmission service, a private computer data network company not of-

fering service to the public for hire, or a specialized mobile radio service operator, a private radio carrier, a radio common carrier, a cellular radio telecommunications carrier, or a cable television company providing cable service as defined in 47 U.S.C. 522. However, each commercial mobile radio service provider common carrier or cellular radio telecommunications carrier shall continue to be liable for any taxes imposed pursuant to chapters chapter 203 and 212 and any fees assessed taxes imposed pursuant to s. 364.025 chapter 212.

(13)(8) "Telecommunications facility" includes real estate, easements, apparatus, property, and routes used and operated to provide two-way telecommunications service to the public for hire within this state.

Section 7. Effective January 1, 1996, section 364.025, Florida Statutes, is created to read:

364.025 Universal services.—

(1) For the purposes of this section, the term "universal service" means an evolving level of access to telecommunications services that, taking into account advances in technologies, services, and market demand for essential services, the commission determines should be provided at just, reasonable, and affordable rates to customers, including those in rural, economically disadvantaged, and high-cost areas. It is the intent of the Legislature that universal service objectives be maintained after the local exchange market is opened to competitively provided services. It is also the intent of the Legislature that during this transition period the ubiquitous nature of the local exchange telecommunications companies be used to satisfy these objectives. For a period of 4 years after the effective date of this section, each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's service territory.

(2) The Legislature finds that each telecommunications company should contribute its fair share to the support of the universal service objectives and carrier-of-last-resort obligations. For a transitional period not to exceed January 1, 2000, an interim mechanism for maintaining universal service objectives and funding carrier-of-last-resort obligations shall established by the commission, pending the implementation of a permanent mechanism. The interim mechanism shall be implemented by no later than January 1, 1996, and shall be applied in a manner that ensures that each alternative local exchange telecommunications company contributes its fair share to the support of universal service and carrier-of-last-resort obligations. The interim mechanism applied to each alternative local exchange telecommunications company shall reflect a fair share of the local exchange telecommunications company's recovery of investments made in fulfilling its carrier-of-last-resort obligations, and the maintenance of universal service objectives. The commission shall ensure that the interim mechanism does not impede the development of residential consumer choice or create an unreasonable barrier to competition. In reaching its determination, the commission shall not inquire into or consider any factor that is inconsistent with s. 364.051(c). The costs and expenses of any government program or project required in part II of this chapter shall not be recovered under this section.

(3) In the event any party, prior to January 1, 2000, believes that circumstances have changed substantially to warrant a change in the interim mechanism, that party may petition the commission for a change, but the commission shall grant

such petition only after an opportunity for a hearing and a compelling showing of changed circumstances, including that the provider's customer population includes as many residential as business customers. The commission shall act on any such petition within 120 days.

(4) Prior to the expiration of this 4-year period, the Legislature shall establish a permanent universal service mechanism upon the effective date of which any interim recovery mechanism for universal service objectives or carrier-of-last-resort obligations imposed on alternative local exchange telecommunications companies shall terminate. The commission is directed to research the issue of a universal service and carrier-of-last-resort mechanism and recommend to the Legislature what the commission determines to be a reasonable and fair mechanism for providing to the greatest number of customers basic local exchange telecommunications service at an affordable price. The recommendation shall be provided to the Governor, the President of the Senate, the Speaker of the House of Representatives and the minority leaders of the Senate and the House of Representatives no later than January 1, 1997. The recommendation shall address, at minimum, the following:

- (a) Whether a subsidy or some other mechanism is necessary.
- (b) If a subsidy is necessary, the minimum amount needed and a mechanism to collect the required amount.
- (c) If a subsidy is necessary, a mechanism to distribute the subsidy funds.
- (d) If a subsidy is necessary, from which providers of telecommunications services the subsidy should be collected.
- (e) Whether the deaveraging of basic local exchange telecommunications service rates should be required to more appropriately reflect the cost of providing service.

(f) Whether targeted subsidies are more appropriate than average basic local exchange telecommunications service pricing for maintaining universal service objectives.

(5) After January 1, 2000, an alternative local exchange telecommunications company may petition the commission to become the universal service provider and carrier of last resort in areas requested to be served by that alternative local exchange telecommunications company. Upon petition of an alternative local exchange telecommunications company, the commission shall have 120 days to vote on granting in whole or in part or denying the petition of the alternative local exchange company. The commission may establish the alternative local exchange telecommunications company as the universal service provider and carrier of last resort, provided that the commission first determines that the alternative local exchange telecommunications company will provide high-quality, reliable service. In the order establishing the alternative local exchange telecommunications company as the universal service provider and carrier of last resort, the commission shall set the period of time in which such company must meet those objectives and obligations and shall set up any mechanism needed to aid such company in carrying out these duties.

(6) By October 1, 1996, the Office of the Public Counsel shall submit a report to the commission on whether the interim mechanism should continue to serve as a means for assisting in the funding of universal service objectives and carrier-of-last-resort obligations or if a different mechanism is needed.

Section 8. Section 364.035, Florida Statutes, is amended to read:

364.035 Rate fixing; criteria service complaints.—

(1) In fixing the just, reasonable, and compensatory rates, charges, fares, tolls, or rentals to be observed and charged for service within the state by any and all telecommunications companies under its jurisdiction, the commission is authorized to give consideration, among other things, to the efficiency, sufficiency, and adequacy of the telecommunications facilities provided and the services rendered, including energy conservation and the efficient use of alternative energy resources; the value of such service to the public; and the ability of the telecommunications company to improve such service and facilities. However, a telecommunications company may not be denied a reasonable rate of return upon its rate base in any order entered pursuant to such proceedings. In its consideration of a reasonable rate of return, the commission shall hear service complaints, if any, that may be presented by subscribers and the public during any proceedings involving such rates, charges, fares, tolls, or rentals. However, service complaints may not be taken up or considered by the commission at any proceedings involving rates, charges, fares, tolls, or rentals unless the telecommunications company has been given at least 30 days' written notice thereof, and any proceeding may be extended, prior to final determination, for such period. Any order issued by the commission under this section may not be made effective until a reasonable time, considering the factor of growth in the community and availability of necessary equipment, has been given the telecommunications company involved to correct the cause of service complaints.

(2) The power and authority herein conferred upon the commission shall not cancel or amend any existing punitive powers of the commission but shall be supplementary thereto and shall be construed liberally to further the legislative intent that adequate service be rendered by telecommunications companies in the state in consideration for the rates, charges, fares, tolls, and rentals fixed by the commission and observed by the telecommunications companies under its jurisdiction.

(3) ~~Each local exchange telecommunications company regulated pursuant to this section shall file with the commission every 4 years or 4 years after the company's most recent proceeding conducted under this section, a report consisting of, at a minimum, the modified minimum filing requirements then required by the commission by rule for rate review proceedings held pursuant to this section. Each local exchange telecommunications company shall serve a copy of such report on the Public Counsel, and shall make it available to each party to its most recent rate review proceeding if requested by such party, concurrently with its filing with the commission. The commission shall, within 10 days after its receipt of such report, make copies of the report available to the public, notwithstanding any other law to the contrary, at no more than its actual costs of reproducing the report. However, local exchange telecommunications companies regulated pursuant to this section which serve fewer than 100,000 access lines shall file the minimum filing report described in this section every 5 years or 5 years after the company's most recent rate review proceeding conducted in accordance with this section. In determining the modified minimum filing requirements for companies with fewer than 100,000 access lines, the commission may impose different or reduced requirements from those imposed on other local exchange telecommunications companies pursuant to this subsection. It is the legislative intent in requiring the mandatory filing of the minimum filing requirements that the Public Counsel and other sub~~

stantially affected persons be assured of periodically obtaining the necessary information to reasonably ascertain whether the rates and charges of a local exchange telecommunications company are just, reasonable, not unjustly discriminatory, not in violation of law, and not yielding excessive compensation for the service rendered. The commission shall implement this section for all local exchange telecommunications companies within 18 months after October 1, 1990, by requiring approximately one-third of the local exchange telecommunications companies to file each 6 months after October 1, 1990. In determining the order of filing of the particular local exchange telecommunications companies, the commission shall consider the time interval since each company's last rate case.

Section 9. Section 364.051, Florida Statutes, is created to read:

364.051 Price regulation.—

(1) SCHEDULE.—Notwithstanding any other provisions of this chapter, the following local exchange telecommunications companies shall become subject to the price regulation described in this section on the following dates:

(a) For a local exchange telecommunications company with 100,000 or more access lines in service as of July 1, 1995, such company may file with the commission a notice of election to be under price regulation effective January 1, 1996, or when an alternative local exchange telecommunications company is certificated to provide local exchange telecommunications services in its service territory, whichever is later.

(b) Effective on the date of filing its election with the commission, but no sooner than January 1, 1996, any local exchange telecommunications company with fewer than 100,000 access lines in service on July 1, 1995, that elects pursuant to s. 364.052 to become subject to this section.

(c) Each company subject to this section shall be exempt from rate base, rate of return regulation and the requirements of ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, and 364.18.

(2) BASIC LOCAL TELECOMMUNICATIONS SERVICE.—Price regulation of basic local telecommunications service shall consist of the following:

(a) Effective January 1, 1996, the rates for basic local telecommunications service of each company subject to this section shall be capped at the rates in effect on July 1, 1995, and such rates shall not be increased prior to January 1, 1999. However, the basic local telecommunications service rates of a local exchange telecommunications company with more than three million basic local telecommunications service access lines in service on July 1, 1995, shall not be increased prior to January 1, 2001.

(b) Upon the date of filing its election with the commission, the rates for basic local telecommunications service of a company that elects to become subject to this section shall be capped at the rates in effect on that date and shall remain capped as stated in paragraph (a).

(c) There shall be a flat-rate pricing option for basic local telecommunications services, and mandatory measured service for basic local telecommunications services shall not be imposed.

(3)(a) By December 1, 1997, the commission shall report and recommend on an exchange by exchange basis to the Legislature as to whether there is a need to extend the caps provided for in paragraphs (a) and (b) of subsection (2) for basic local telecommunications service prices, or whether there is some other means, excluding rate of return regulation, to ensure reasonable and affordable rates for basic local telecommunications service.

(b) In making the determination as to whether price caps are needed to ensure reasonable and affordable rates for basic local telecommunications service provided by a local exchange telecommunications company with less than 3 million basic local telecommunications service access lines in service on July 1, 1995, the commission shall consider whether the level of competition in the area justifies the elimination of price caps.

(c) The Legislature shall review the commission's report submitted pursuant to subsection (3)(a) and determine whether there is a continuing need for basic local telecommunications service prices to remain capped. Unless the Legislature acts to the contrary, the caps shall remain in place in any exchange in which the Legislature determines that the level of competition does not justify the elimination of price caps for an additional two years or until the commission during that two year period determines that the level of competition in the exchange justifies the elimination of price caps.

(4) In the event that it is determined that the level of competition justifies the elimination of price caps in an exchange served by a local exchange telecommunications company with less than 3 million basic local telecommunications service access lines in service, or at the end of five years for any local exchange telecommunications company, the local exchange telecommunications company may thereafter on thirty days' notice adjust its basic service prices once in any twelve month period in an amount not to exceed the change in inflation less 1 percent. Inflation shall be measured by the changes in the Gross Domestic Product Fixed 1987 Weights Price Index, or successor fixed weight price index, published in the Survey of Current Business or a publication, by the United States Department of Commerce. In the event any local exchange telecommunications company, after January 1, 2001, believes that the level of competition justifies the elimination of any form of price regulation the company may petition the Legislature.

(5) Notwithstanding the provisions of subsection (2), any local exchange telecommunications company that believes circumstances have changed substantially to justify any increase in the rates for basic local telecommunications services may petition the commission for a rate increase, but the commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances. The costs and expenses of any government program or project required in part II of this chapter shall not be recovered under this subsection unless such costs and expenses are incurred in the absence of a bid and subject to carrier-of-last-resort obligations as provided for in part II of this chapter. The commission shall act upon any such petition within 120 days of its filing.

(6) NON-BASIC SERVICES.—Price regulation of non-basic services shall consist of the following:

(a) Each company subject to this section shall maintain tariffs with the commission containing the terms, conditions and rates for each of its non-basic services, and may set or change, on 15 days' notice, the rate for each of its non-basic

services, except that a price increase for any non-basic service category shall not exceed six percent within a twelve-month period until there is another provider providing local telecommunications service in an exchange area at which time the price for any non-basic service category may be increased in an amount not to exceed twenty percent within a twelve-month period, and the rate shall be presumptively valid. However, for purposes of this subsection, the prices of:

1. A voice-grade, flat-rate, multi-line business local exchange service, including multiple individual lines, centrex lines, private branch exchange trunks, and any associated hunting services, that provides dial tone and local usage necessary to place a call within a local exchange calling area; and

2. Telecommunications services provided under contract service arrangements to the SUNCOM Network, as defined in chapter 282,

shall be capped at the rates in effect on July 1, 1995, and such rates shall not be increased prior to January 1, 1999; provided, however, that a petition to increase such rates may be filed pursuant to subsection (5) of this section utilizing the standards set forth therein. There shall be a flat-rate pricing option for multi-line business local exchange service, and mandatory measured service for multi-line business local exchange service shall not be imposed. Nothing contained in this section shall prevent the local exchange telecommunications company from meeting offerings by any competitive provider of the same, or functionally equivalent, non-basic services in a specific geographic market or to a specific customer by de-averaging the price of any non-basic service, packaging non-basic services together or with basic services, using volume discounts and term discounts, and offering individual contracts. However, the local exchange telecommunications company shall not engage in any anticompetitive act or practice, nor unreasonably discriminate among similarly situated customers.

(b) The commission shall have continuing regulatory oversight of non-basic services for purposes of ensuring resolution of service complaints, preventing cross-subsidization of non-basic services with revenues from basic services, and ensuring that all providers are treated fairly in the telecommunications market. The cost standard for determining cross-subsidization is whether the total revenue from a non-basic service is less than the total long-run incremental cost of the service. Total long-run incremental cost means service-specific volume and non-volume-sensitive costs.

(c) The price charged to a consumer for a non-basic service shall cover the direct costs of providing the service and shall, to the extent a cost is not included in the direct cost, include as an imputed cost the price charged by the company to competitors for any monopoly component used by a competitor in the provision of its same or functionally equivalent service.

Section 10. Section 364.052, Florida Statutes, is created to read:

364.052 Regulatory methods for small local exchange telecommunications companies.—

(1) For purposes of this section, a small local exchange telecommunications company is a local exchange telecommunications company certificated by the commission prior to July 1, 1995, which has fewer than 100,000 access lines in service on that date.

(2) A small local exchange telecommunications company shall remain under rate base, rate of return regulation until the company elects to become subject to s. 364.051, or January 1, 2001, whichever occurs first. After July 1, 1996, a company subject to this section, electing to be regulated pursuant to s. 364.051, will have any overearnings attributable to a period prior to the date on which the company makes the election subject to refund or other disposition by the commission. Small local exchange telecommunications companies not electing the price regulation provided for under s. 364.051 shall also be regulated pursuant to ss. 364.03, 364.035 (1) and (2), 364.05, and 364.055 and other provisions necessary for rate base, rate of return regulation. If a small local exchange telecommunications company has not elected to be regulated under s. 364.051, by January 1, 2001, the company shall remain under rate base, rate of return regulation until such time as a certificated alternative local exchange company provides basic local telecommunications service in the company's territory. At such time, the small local exchange telecommunications company shall be subject to s. 364.051.

(a) By July 1, 1996, the commission shall establish, by rule, ranges of basic factors for lives and salvage values to be used in developing depreciation rates for companies subject to this section. Companies shall have the option of using basic factors within the established ranges or of filing depreciation studies.

(b) By January 1, 1996, the commission shall adopt, by rule, streamlined procedures for regulating companies subject to this section. These procedures shall minimize the burdens of regulation with regard to audits, investigations, service standards, cost studies, reports and other matters, and the commission shall establish, by rule, only those procedures that are cost justified and are in the public interest so that universal service may be promoted. Upon petition filed in this rulemaking proceeding, the commission shall review and may approve any regulations unique to the specific circumstances of a company subject to this section.

(3) A company subject to this section may at any time after January 1, 1996, elect to be regulated pursuant to s. 364.051. If such a company so elects or provides cable television programming services directly or as video dialtone applications authorized under 47 U.S.C., s. 214, except as provided for in compliance with part II of this chapter, a certificated alternative local exchange company may provide local exchange telecommunications services within the territory of the electing company.

(4) Any alternative local exchange telecommunications company competing within the territory of any small local exchange telecommunications company must do so on an exchange-wide basis for the provision of flat-rated, switched residential and business local exchange telecommunications services in all exchanges in which they elect to serve, unless the commission determines otherwise. The alternative local exchange telecommunications company may petition and the commission has the authority to determine that it is in the public interest for an alternative local exchange telecommunications company to service a geographic territory that is less than an entire exchange.

(5) Any company subject to this section shall continue to function as the universal service provider and carrier of last resort in the territory in which such company was certificated to provide service on July 1, 1995; provided, however, that after January 1, 2001, such company shall only be required to act as the universal service provider and carrier of last resort if the commission finds that it is economi-

cally feasible for such company to remain the universal service provider and carrier of last resort. If the commission finds that it is not economically feasible for a small local exchange telecommunications company to remain the carrier of last resort, the commission shall establish a funding mechanism to permit such company to fulfill its obligations as the carrier of last resort.

(6) Notwithstanding any other provisions of this act, no local exchange telecommunications company subject to this section will be required to resell any tariffed, flat-rated, switched residential or business services while the price caps for either basic local telecommunications services or non-basic services remain in place.

Section 11. Subsection (3) is added to section 364.057, Florida Statutes, to read:

364.057 Experimental and transitional rates and services.—

(3) After July 1, 1995, the commission may authorize experimental services, limited to two-way, intrastate, residential telecommunications services, for the purposes of testing marketing strategies or technical feasibility, and the commission shall place reasonable restrictions on the time and geographic area in which such experimental services are provided, except that no such authorized experiment shall extend beyond December 31, 1995, unless the entity has applied for a certificate pursuant to the provisions of this chapter.

Section 12. Subsection (1) of section 364.058, Florida Statutes, is amended to read:

364.058 Limited proceedings.—

(1) Upon petition or its own motion, the commission may conduct a limited or expedited proceeding to consider and act upon any matter within its jurisdiction; ~~including any matter the resolution of which requires a telecommunications company to adjust its rates.~~

Section 13. Section 364.10, Florida Statutes, is amended to read:

364.10 Undue advantage to person or locality prohibited; ~~exception.~~—

(1) A telecommunications company may not make or give any undue or unreasonable preference or advantage to any person or locality or subject any particular person or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

(2) The prohibitions of subsection (1) notwithstanding, a telecommunications company serving as carrier of last resort shall provide a Lifeline Assistance Plan to qualified residential subscribers, as defined in a commission-approved tariff and a preferential rate to eligible facilities as provided for in part II of this chapter.

Section 14. Section 364.16, Florida Statutes, is amended to read:

364.16 Connection of lines and transfers; ~~local interconnection; telephone number portability.~~—

(1) Whenever the commission finds that connections between any two or more local exchange telecommunications companies, whose lines form a continuous line of communication or could be made to do so by the construction and maintenance of suitable connections at common points, can reasonably be made and efficient

service obtained, and that such connections are necessary, the commission may require such connections to be made, may require that telecommunications services be transferred, and may prescribe through lines and joint rates and charges to be made, used, observed, and in force in the future and fix the rates and charges by order to be served upon the company or companies affected.

(2) Each alternative local exchange telecommunications company shall provide access to, and interconnection with, its telecommunications services to any other provider of local exchange telecommunications services requesting such access and interconnection at nondiscriminatory prices, terms, and conditions. If the parties are unable to negotiate mutually acceptable prices, terms, and conditions after 60 days, either party may petition the commission and the commission shall have 120 days to make a determination after proceeding as required by s. 364.162(6) pertaining to interconnection services.

(3) Each local exchange telecommunications company shall provide access to, and interconnection with, its telecommunications facilities to any other provider of local exchange telecommunications services requesting such access and interconnection at nondiscriminatory prices, rates, terms, and conditions established by the procedures set forth in s. 364.162.

(a) No local exchange telecommunications company or alternative local exchange telecommunications company shall knowingly deliver traffic, for which terminating access service charges would otherwise apply, through a local interconnection arrangement without paying the appropriate charges for such terminating access service.

(b) Any party with a substantial interest may petition the commission for an investigation of any suspected violation of paragraph (a). In the event any certificated local exchange service provider knowingly violates paragraph (a), the commission shall have jurisdiction to arbitrate bona fide complaints arising from the requirements of this subsection and shall, upon such complaint, have access to all relevant customer records and accounts of any telecommunications company.

(4) In order to assure that consumers have access to different local exchange service providers without being disadvantaged, deterred, or inconvenienced by having to give up the consumer's existing local telephone number, all providers of local exchange services must have access to local telephone numbering resources and assignments on equitable terms that include a recognition of the scarcity of such resources and are in accordance with national assignment guidelines. Each local exchange provider, except small local exchange telecommunications companies under rate of return regulation, shall provide a temporary means of achieving telephone number portability. The parties, under the direction of the commission, shall set up a number portability standards group by no later than September 1, 1995, for the purposes of investigation and development of appropriate parameters, costs, and standards for number portability. If the parties are unable to successfully negotiate the prices, terms, and conditions of a temporary number portability solution, the commission shall establish a temporary number portability solution by no later than January 1, 1996. Each local exchange service provider shall make necessary modifications to allow permanent portability of local telephone numbers between certificated providers of local exchange service as soon as reasonably possible after the development of national standards. The parties shall negotiate the prices, terms, and conditions for permanent telephone number portability.

arrangements. In the event the parties are unable to satisfactorily negotiate the prices, terms, and conditions, either party may petition the commission and the commission shall, after opportunity for a hearing, set the rates, terms, and conditions. The prices and rates shall not be below cost. Number portability between different certificated providers of local exchange service at the same location shall be provided temporarily no later than January 1, 1996.

(5) When requested, each certificated telecommunications company shall provide access to any poles, conduits, rights-of-way, and like facilities that it owns or controls to any local exchange telecommunications company or alternative local exchange telecommunications company pursuant to reasonable rates and conditions mutually agreed to which do not discriminate between similarly situated companies.

Section 15. Section 364.161, Florida Statutes, is created to read:

364.161 Unbundling and resale.—

(1) Upon request, each local exchange telecommunications company shall unbundle all of its network features, functions, and capabilities, including access to signaling databases, systems and routing processes, and offer them to any other telecommunications provider requesting such features, functions or capabilities for resale to the extent technically and economically feasible. The parties shall negotiate the terms, conditions, and prices of any feasible unbundling request. If the parties cannot reach a satisfactory resolution within 60 days, either party may petition the commission to arbitrate the dispute and the commission shall make a determination within 120 days. In no event, however, shall the local exchange telecommunications company be required to offer such unbundled services, network features, functions or capabilities, or unbundled local loops at prices that are below cost. The prices, rates, terms, and conditions for the unbundled services shall be established by the procedure set forth in s. 364.162 and shall be equally applicable to both the local exchange telecommunications company and its affiliates in the provision of their own service, until such time as the local exchange telecommunications company petitions the commission and the commission determines otherwise, but in no event prior to July 1, 1999.

(2) Other than ensuring that the resale is of the same class of service, no local exchange telecommunications company may impose any restrictions on the resale of its services or facilities except those the commission may determine are reasonable. The local exchange telecommunications company's currently tariffed, flat-rated, switched residential and business services shall not be required to be resold until the local exchange telecommunications company is permitted to provide inter-LATA services and video programming, but in no event before July 1, 1997. In no event shall the price of any service provided for resale be below cost.

(3) Only after an alternative local exchange telecommunications company has been determined to be a carrier of last resort shall such company, upon request by another telecommunications provider, be required, for purposes of resale, to unbundle its local exchange services, network features, functions and capabilities, including its local loop, to the extent such unbundling is technically and economically feasible. The parties shall negotiate the terms, conditions, and prices of any feasible unbundling request. If the parties cannot reach a satisfactory resolution within 60 days, either party may petition the commission to arbitrate the dispute and

the commission shall make a determination within 120 days. The prices shall not be below cost.

Section 16. Section 364.162, Florida Statutes, is created to read:

364.162 Negotiated prices for interconnection and for the resale of services and facilities; commission rate setting.—

(1) Any party who, on July 1, 1995, has an application on file with the commission to become an alternative local exchange telecommunications company shall have until August 31, 1995, to negotiate with a local exchange telecommunications company mutually acceptable prices, terms, and conditions of interconnection and for the resale of services and facilities.

(2) If a negotiated price is not established by August 31, 1995, either party may petition the commission to establish nondiscriminatory rates, terms, and conditions of interconnection and for the resale of services and facilities. Whether set by negotiation or by the commission, interconnection and resale prices, rates, terms, and conditions shall be filed with the commission before their effective date. The commission shall have the authority to arbitrate any dispute regarding interpretation of interconnection or resale prices and terms and conditions.

(3) In the event that the commission receives a single petition relating to either interconnection or resale of services and facilities, it shall vote, within 120 days following such filing, to set nondiscriminatory rates, terms, and conditions, except that the rates shall not be below cost. If the commission receives one or more petitions relating to both interconnection and resale of services and facilities, the commission shall conduct separate proceedings for each and, within 120 days following such filing, make two separate determinations setting such nondiscriminatory rates, terms, and conditions, except that the rates shall not be below cost.

(4) In setting the local interconnection charge, the commission shall determine that the charge is sufficient to cover the cost of furnishing interconnection.

(5) The commission shall ensure that, if the rate it sets for a service or facility to be resold provides a discount below the tariff rate for such service or facility which appropriately reflects the local exchange telecommunications company's avoidance of the expense and cost of marketing such service or facility to retail customers, such rate must not be below cost. The commission shall also assure that this rate is not set so high that it would serve as a barrier to competition.

(6) An alternative local exchange telecommunications company that did not have an application for certification on file with the commission on July 1, 1995, shall have 60 days from the date it is certificated to negotiate with a local exchange telecommunications company mutually acceptable prices, terms, and conditions of interconnection and for the resale of services and facilities. If a negotiated price is not established after 60 days, either party may petition the commission to establish nondiscriminatory rates, terms, and conditions of interconnection and for the resale of services and facilities. The commission shall have 120 days to make a determination after proceeding as required by subsection (3).

(7) Prior to July 1, 1999, the parties may negotiate a new local interconnection charge to be effective not earlier than July 1, 1999. If the parties cannot satisfactorily negotiate a new local interconnection charge, either party may petition the commission to resolve the matter. In the event any party, prior to July 1, 1999, be-

believes that circumstances have changed substantially to warrant a different price for local interconnection, that party may petition the commission for a price change, but the commission shall grant such petition only after an opportunity for a hearing and a compelling showing of changed circumstances, including that the provider's customer population includes as many residential as business customers. The commission shall act on any such petition within 120 days.

Section 17. Section 364.163, Florida Statutes, is created to read:

364.163 Network access services.—For purposes of this section, "network access service" is defined as any service provided by a local exchange telecommunications company to a telecommunications company certificated under this chapter or licensed by the Federal Communications Commission to access the local exchange telecommunications network, excluding the local interconnection arrangements in s. 364.16 and the resale arrangements in s. 364.161. Each local exchange telecommunications company subject to s. 364.051 shall maintain tariffs with the commission containing the terms, conditions, and rates for each of its network access services.

(1) Effective January 1, 1996, the rates for network access services of each company subject to this section shall be capped at the rates in effect on July 1, 1995, and shall remain capped until January 1, 1999. Upon the date of filing its election with the commission, the network access service rates of a company that elects to become subject to this section shall be capped at the rates in effect on that date and shall remain capped for 3 years.

(2) After the termination of the caps imposed on rates by subsection (1) and after a local exchange telecommunications company's intrastate switched access rates reach parity with its interstate switched access rates, a company subject to this section may, on 30 days' notice, annually adjust any specific network access service rate in an amount not to exceed the cumulative change in inflation experienced after the date of the last adjustment, provided, however, that no such adjustment shall ever exceed 3 percent annually of the then-current prices. Inflation shall be measured by the changes in Gross Domestic Product Fixed 1987 Weights Price Index, or successor fixed weight price index, published in the Survey of Current Business, or successor publication, by the United States Department of Commerce.

(3) After the termination of the caps imposed on rates by subsection (1), a company subject to this section may, at any time, petition the commission for a network access service rate change to recover the cost of governmentally mandated projects or programs or an increase in federal or state income tax incurred after that date. The costs and expenses of the government program or project required in part II of this chapter shall not be recovered under this paragraph unless such costs and expenses are incurred in the absence of a bid and subject to carrier of last resort obligations as provided for in part II of this chapter. With respect to governmentally mandated projects and programs, such petition shall be acted upon no later than 90 days after the date of filing. A company subject to this section shall show the commission that the cost of a project or program is not recoverable either from the government mandating the project or program or from the beneficiaries of the project or program through user fees or other new revenue sources from the project or program, and to the extent that cost decreases resulting from the project or program are reflected as an offset to cost increases. A company subject to this section shall decrease its network access rates by amounts that reflect any federal

or state income tax reduction. Nothing contained in this section shall allow any revisions in the rates, terms, and conditions for commercial mobile radio service access, which revisions are inconsistent with the requirements or methodologies of the Federal Communications Commission.

(4) A company subject to this section may choose to implement all or a portion of a rate increase allowed for network access service by subsections (1), (2), and (3). Notwithstanding subsections (1), (2), and (3), a company subject to this section may choose to decrease network service rates at any time, and decreased rates shall become effective upon 7 days' notice.

(5) Company-proposed changes to the terms and conditions for existing network access services in accordance with subsections (1), (2), (3), and (4) shall be presumed valid and become effective upon 15 days' notice. Company-proposed rate reductions shall become effective upon 7 days' notice. Rate increases made by the local exchange telecommunications company shall be presumed valid and become effective on the date specified in the tariff, but in no event earlier than 30 days after the filing of such tariff. The commission shall have continuing regulatory oversight of local exchange telecommunications company-provided network access services for purposes of determining the correctness of any price increase resulting from the application of the inflation index and making any necessary adjustments, establishing reasonable service quality criteria, and assuring resolution of service complaints. No later than 30 days after the filing of such tariff, the commission may, with respect to determining the correctness of any price increase, vote, without hearing, the local exchange telecommunications company to hold subject to refund all revenues collected under the rate increase. Within 60 days after such order, the commission must make a determination either compelling a refund of all or part of such revenues or releasing them from such requirement.

(6) Any local exchange telecommunications company whose current intrastate switched access rates are higher than its interstate switched access rates in effect on December 31, 1994, shall reduce its intrastate switched access rates by 5 percent annually beginning October 1, 1996. Any such company shall be relieved of this requirement if it reduces such rates by a greater percentage by the relevant date or earlier, taking into account any reduction made pursuant to Florida Public Service Commission Order No. PSC 94-0172-FOF-TL. Upon reaching parity between intrastate and 1994 interstate switched access rates, no further reductions shall be required. Any telecommunications company whose intrastate switched access rate is reduced by this subsection shall decrease its customer long distance rates by the amount necessary to return the benefits of such reduction to its customers.

(7) Telecommunications company intrastate switched access and customer long distance rate reductions shall become effective on October 1 of each relevant year. Rate decreases proposed in tariff revisions filed by the telecommunications companies with the commission shall be presumed valid and become effective on October 1 of each relevant year.

(8) No later than 30 days after the filing of such tariff, the commission may, with respect to determining the correctness of any rate decrease, vote, without hearing, the telecommunications company to hold subject to refund all intrastate switched access or customer long distance rate revenues collected after the rate decrease. Within 60 days after such order, the commission must make a determination either compelling a refund of the appropriate part of such revenues or releasing all such revenues from such requirement.

(9) The commission shall have continuing regulatory oversight of intrastate switched access and customer long distance rates for purposes of determining the correctness of any rate decrease by a telecommunications company resulting from the application of this section and making any necessary adjustments to those rates, establishing reasonable service quality criteria, and assuring resolution of service complaints.

Section 18. Subsection (1) of section 364.183, Florida Statutes, is amended to read:

364.183 Access to company records.—

(1) The commission shall have access to all records of a telecommunications company that are reasonably necessary for the disposition of matters within the commission's jurisdiction. The commission shall also have access to those records of a local exchange telecommunications company's affiliated companies, including its parent company, that are reasonably necessary for the disposition of any matter concerning an affiliated transaction or a claim of anti-competitive behavior including claims of cross-subsidization and predatory pricing. The commission may require a telecommunications company to file records, reports or other data directly related to matters within the commission's jurisdiction in the form specified by the commission and may require such company to retain such information for a designated period of time. The commission shall have reasonable access to all company records, and to the records of the telecommunications company's affiliated companies, including its parent company, regarding transactions or cost allocations among the telecommunications company and such affiliated companies, and such records necessary to ensure that a telecommunications company's ratepayers do not subsidize the company's unregulated activities. Upon request of the company or other person, any records received by the commission which are claimed shown by the company or other person and found by the commission to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Section 19. Section 364.24, Florida Statutes, is amended to read:

364.24 Penalty for making telephone message or customer account information known.—

(1) Except as otherwise deemed by law, any officer or person in the employ of any telecommunications company, or any person in charge of any office, exchange, or place where messages or communications are sent, received, or heard by telephone, who shall disclose or make known to any person other than the person to whom the telephone message or communication is directed, or his duly authorized agent, partner, clerk, or some member of his family, any part of the contents or substance of any message or communication sent, received, or heard by him, by telephone, by reason of the position he occupies or fills, without consent of the person sending or receiving such message or communication, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any officer or person in the employ of any telecommunications company shall not intentionally disclose customer account records except as authorized by the customer or as necessary for billing purposes, or required by subpoena, court order, other process of court, or as otherwise allowed by law. Any person who violates any provision of this section commits a misdemeanor of the second degree.

punishable as provided in s. 775.082 or s. 775.083. Nothing herein precludes disclosure of customers' names, addresses, or telephone numbers to the extent they are otherwise publicly available.

Section 20. Section 364.245, Florida Statutes, is created to read:

364.245 Discontinuation of telecommunications service used for unlawful purpose.—

(1) The Legislature finds that some persons use telecommunications services to violate state or federal law. The Legislature further finds that some persons use telecommunications services or technology, such as call forwarding and cellular radio transmissions, to avoid detection or arrest.

(2) A customer of a telecommunications company operating within the state may use telecommunications services only for lawful purposes.

(3) If a local, state, or federal law enforcement officer acting within the scope of the officer's duties obtains evidence that telecommunications services are being used or have been used by a customer or by the employee or agent of the customer to violate state or federal law, the officer may apply to the circuit court of the county in which the suspected violation of state or federal law occurred for an order requiring the telecommunications company to discontinue service to the customer of the services. The court shall hold a hearing on the application as soon as possible, but no sooner than 48 hours after notice of the application for discontinuation of service is delivered to the address at which the telecommunications services are furnished or to the address to which bills for telecommunications services are mailed, according to the telecommunications company records. Notice must also be given to the registered agent for the service of process upon the telecommunications company at least 48 hours prior to the hearing. If the court finds clear and convincing evidence that the telecommunications services are being used or have been used to violate state or federal law, the court shall order the telecommunications company to discontinue such service immediately.

(4) Telecommunications service discontinued under this section may be reinstated only by court order, and call forwarding or message referrals, whether recorded or live, may not be provided until reinstatement of service is ordered by the court.

(5) A telecommunications company shall be held harmless from liability to any person in complying with any court order issued under this section.

Section 21. Section 364.335, Florida Statutes, is amended to read:

364.335 Application for certificate.—

(1) Each applicant for a certificate shall:

(a) Provide all information required by rule or order of the commission, which may include a detailed inquiry into the ability of the applicant to provide service, a detailed inquiry into the territory and facilities involved, and a detailed inquiry into the existence of service from other sources within geographical proximity to the territory applied for.

(b) File with the commission schedules showing all rates for service of every kind furnished by it and all rules and contracts relating to such service.

(c) File the application fee required by the commission in an amount not to exceed \$250. Such fees shall be deposited in accordance with s. 350.113.

(d) Submit an affidavit that the applicant has caused notice of its application to be given to such persons and in such manner as may be prescribed by commission rule.

(2) If the commission grants the requested certificate, any person who would be substantially affected by the requested certification may, within 21 days after the granting of such certificate, file a written objection requesting a proceeding pursuant to s. 120.57. The commission may, on its own motion, institute a proceeding under s. 120.57 to determine whether the grant of such certificate is in the public interest. The commission shall order such proceeding conducted in or near the territory applied for, if feasible. If any person requests a public hearing on the application, such hearing shall, if feasible, be held in or near the territory applied for, and the transcript of the public hearing and any material submitted at or prior to the hearing shall be considered part of the record of the application and any proceeding related to the application.

(3) The commission may grant a certificate, in whole or in part or with modifications in the public interest, but in no event granting authority greater than that requested in the application or amendments thereto and noticed under subsection (1); or it may deny a certificate. The commission may not grant ~~certificates a certificate~~ for a proposed telecommunications ~~companies company~~, or for the extension of an existing telecommunications company, ~~without regard to whether such companies~~ which will be in competition with or duplicate the local exchange services provided by any other telecommunications company ~~unless it first determines that the existing facilities are inadequate to meet the reasonable needs of the public and it first amends the certificate of such other telecommunications company to remove the basis for competition or duplication of services.~~ The commission may ~~also, however,~~ grant such a certificate for a proposed telecommunications company, or for the extension of an existing telecommunications company, which will be providing either competitive or duplicative pay telephone service pursuant to the provisions of s. 364.3375, or private line service by a certified alternative access vendor pursuant to s. 364.337(6), ~~without determining that existing facilities are inadequate to meet the reasonable needs of the public and without amending the certificate of another telecommunications company to remove the basis for competition or duplication of services.~~ For the purposes of this section, "private line service" means any point-to-point or point-to-multipoint service dedicated to the exclusive use of an end user for the transmission of any public telecommunications service. Pay telephone service shall include that telephone service using telephones that are capable of accepting payment by specie, paper money, or credit cards.

(4) Revocation, suspension, transfer, or amendment of a certificate shall be subject to the provisions of this section; except that, when the commission initiates the action, the commission shall furnish notice to the appropriate local government and to the Public Counsel.

Section 22. Section 364.336, Florida Statutes, is amended to read:

364.336 Regulatory assessment fees.—Notwithstanding any provisions of law to the contrary, each telecommunications company licensed or operating under this chapter, for any part of the preceding 6-month period, shall pay to the commission, within 30 days following the end of each 6-month period, a fee that may

not exceed 0.25 percent annually of its gross operating revenues derived from intrastate business. Differences, if any, between the amount paid in any 6-month period and the amount actually determined by the commission to be due shall, upon motion by the commission, be immediately paid or refunded. Fees under this section may not be less than \$50 annually. Such fees shall be deposited in accordance with s. 350.113. The commission may by rule establish criteria for payment of the regulatory assessment fee on an annual basis rather than on a semiannual basis.

Section 23. Section 364.337, Florida Statutes, is amended to read:

364.337 Alternate local exchange telecommunications companies; intrastate interexchange telecommunications services; certification.—

(1) Upon this act becoming a law, a party may file an application for a certificate as an alternative local exchange telecommunications company before January 1, 1996, and the commission shall conduct its review of the application and take all actions necessary to process the application. However, an application shall become effective no sooner than January 1, 1996. The commission shall grant a certificate of authority to provide alternative local exchange service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served. In no event may an alternative local exchange telecommunications company offer basic local telecommunications services within the territory served by a company subject to s. 364.052 prior to January 1, 2001, unless the small local exchange telecommunications company elects to be regulated under s. 364.051 or provides cable television programming services directly or as video dialtone applications authorized under 47 U.S.C. s. 214, except as provided for in compliance with part II of this chapter. It is the intent of the Legislature that the commission act expeditiously to grant certificates of authority under this section and that the grant of certificates not be affected by the application of any criteria other than that specifically enumerated in this subsection.

(2) Rules adopted by the commission governing the provision of alternative local exchange telecommunications service shall be consistent with s. 364.01. The basic local telecommunications service provided by an alternative local exchange telecommunications company must include access to operator services, "911" services, and relay services for the hearing impaired. There shall be a flat-rate pricing option for basic local telecommunications services, and mandatory measured service for basic local telecommunications services shall not be imposed. A certificated alternative local exchange telecommunications company may petition the commission for a waiver of some or all of the requirements of this chapter, except ss. 364.16, 364.336, and subsections (1) and (5). The commission may grant such petition if determined to be in the public interest. In no event shall alternative local exchange telecommunications companies be subject to the requirements of ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, 364.18, and 364.3381.

(3) The commission shall grant a certificate of authority to provide intrastate interexchange telecommunications service upon a showing that the applicant has sufficient technical, financial, and managerial capability to provide such service in the geographic area proposed to be served.

(4) Rules adopted by the commission governing the provision of intrastate interexchange telecommunications service shall be consistent with s. 364.01. A certificated intrastate interexchange telecommunications company may petition the

commission for a waiver for some or all of the requirements of this chapter, except s. 364.16, s. 364.335(3), or s. 364.337(5). The commission may grant such petition if determined to be in the public interest. In no event shall intrastate interexchange telecommunications companies be subject to the requirements of ss. 364.03, 364.035, 364.037, 364.05, 364.055, 364.14, 364.17, 364.18, 364.183(1), and 364.3381.

(5) The commission shall have continuing regulatory oversight over the provision of basic local exchange telecommunications service provided by a certificated alternative local exchange telecommunications company or a certificated alternative access vendor for purposes of establishing reasonable service quality criteria, assuring resolution of service complaints, and ensuring the fair treatment of all telecommunications providers in the telecommunications marketplace.

(1) When the commission grants a certificate to a telecommunications company to provide intrastate interexchange telecommunications service, the commission, if it finds that such action is consistent with the public interest, may:

(a) Prescribe different requirements for the company than are otherwise prescribed for telecommunications companies; or

(b) Exempt the company from some or all of the requirements of this chapter and s. 360.112.

(2) In determining whether the actions authorized by subsection (1) are consistent with the public interest, the commission shall consider:

(a) The number of firms providing the service;

(b) The geographic availability of the service from other firms;

(c) The quality of service available from alternative suppliers;

(d) The effect on telecommunications service rates charged to customers of other companies; and

(e) Any other factors that the commission considers relevant to the public interest.

(6)(3)(a) The Legislature If the commission finds the provision of alternative access vendor services to be in the public interest, and the commission it may authorize the provision of such service. For the purposes of this section, effective January 1, 1996, "alternative access vendor services" means the provision of private line service between an entity and its facilities at another location, whether owned by the entity or an unaffiliated entity or dedicated access service between an end-user and an interexchange carrier by other than a local exchange telecommunications company, and are considered to be interexchange telecommunications services. For purposes of this chapter, "private line service" means any dedicated point-to-point or point-to-multipoint service for the transmission of any public telecommunications service.

(b) No person shall provide alternative access vendor services without first obtaining a certificate from the commission. Any certificated alternative access vendor as of the date this act becomes a law wishing to provide alternative local exchange telecommunications service in addition to the services authorized in its certificate may do so, effective January 1, 1996, upon furnishing written notice to the commission.

(7)(4) Each amount paid by an interexchange telecommunications company or a pay telephone company to a telecommunications company providing local service for use of the local network shall be deducted from gross operating revenues for purposes of determining the amount of the regulatory fee assessed the interexchange telecommunications company pursuant to s. 350.113 or s. 364.336.

Section 24. Paragraph (e) is added to subsection (2) of section 364.3375, Florida Statutes, to read:

364.3375 Pay telephone service providers.—

(2) Each pay telephone station shall:

(e) Be eligible to subscribe to flat-rate, single-line business local exchange services.

Section 25. Section 364.502, Florida Statutes, is created to read:

364.502 Video programming; capacity for public use.—

(1) Each local exchange telecommunications company or alternative local exchange telecommunications company which provides video programming shall, prior to providing such programming, file with the commission a designation of reserve capacity for public, educational, or governmental use. The commission shall review the filed designation to determine whether such designation ensures that public education and public information programming are adequately available to the customers of such telecommunications company. The commission shall consider the following factors in determining whether the filed designation complies with the requirements of this chapter:

(a) Reservation and designation requirements provided by federal law, if any.

(b) The level of demand for such programming in a given service area.

(c) The barriers to providing such programming in the service area.

(d) The cost and availability of such programming in the service area.

(e) Other factors which the commission deems appropriate.

(2) Capacity pursuant to this subsection shall not be sold, resold, or otherwise transferred for money or other thing of value. The quality of capacity reserved pursuant to this subsection shall be equivalent to the best quality of available capacity of the local exchange telecommunications company which provides video programming in all respects.

Section 26. Section 364.3381, Florida Statutes, is amended to read:

364.3381 Cross-subsidization.—

(1) The price of a non-basic competitive telecommunications service provided by a local exchange telecommunications company shall not be below its cost by use of subsidization from rates paid by customers of basic monopoly services subject to the jurisdiction of the commission.

(2) A local exchange telecommunications company which offers both basic and non-basic monopoly and competitive telecommunications services shall establish prices for such services that segregate its intrastate investments and expenses in accordance with allocation methodologies as prescribed by the commission to en-